1998

SENATE AGRICULTURE/ ENVIRONMENT/ NATURAL RESOURCES COMMITTEE

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

MEMBER	LOCATION	PHONE	SECRETARY
Albertson, Charles W., **Chairman**	525 LOB	3-5705	Julia Birdsong Committee Clerk
Gulley, Wib, **Vice Chairman**	408 LOB	5-3036	Carol Resar
Horton, Hamilton C., Jr., **Vice Chairman**	1406 LB	3-3272	Genie Clark
Wellons, Allen H., **Vice Chairman**	1026 LB	3-5850	Frances Drew
Cochrane, Betsy, **Ranking Minority Member**	1127 LB	5-2525	Phyllis Porter
Clark, R. L.	1118 LB	3-5742	Linda Hines
Cooper, Roy A.	2010 LB	3-5664	Susan Moore
East, Don	521 LOB	3-5655	Nancy Pulley
Foxx, Virginia	1120 LB	3-5743	Anne Soles
Garwood, John A.	1419 LB	5-0706	Martha Jordan
Jenkins, Thomas K.	622 LOB	3-6275	Katy Haynes
Kinnaird, Ellie	2115 LB	3-5804	Kathie Young
McDaniel, J. Mark, Jr.	522 LOB	3-5620	Wanda Joyner
Miller, Brad	621 LOB	3-9349	Cornelia McMillan
Odom, Fountain	300B LOB	3-5707	Anne Wilson
Page, Dan	1414 LB	3-7659	Barbara Eldridge
Perdue, Beverly E.	629 LOB	3-2055	Anne Canady
Phillips, Jim W., Sr.	628 LOB	3-5870	Gerry Bowles
Weinstein, David F.	2108 LOB	3-5651	Terry Lefort

Committee Counsel

Givens, George	LOB 545	3-2578
Holm, Hannah	LOB 545	3-2578
Hudson, Jeffrey	LOB 545	3-2578
Riley, Barbara	LOB 545	3-2578
Zechini, Rick	LOB 545	3-2578

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 4	HOLMES	YADKINVILLE SEWAGE TREATMENT CONTRAC	R -CH. SL 97-0003	02-25-97	03-04-97
H 16	HALL	NO ANIMAL WASTE SYS. IN FLOODPLAINS	*S -REF TO COM ON AGRICUL&	03-18-97	
H 188=	CULP	ENVIRONMENTAL TECH. CORRECTIONS	*S -REF TO COM ON AGRICUL&	04-22-97	
H 189=	CULP	DRINKING WATER AMENDS	R -CH. SL 97-0030	04-01-97	04-08-97
H 194=	CULP	STATE REVOLVING WATER FUND ACCOUNT	*R -CH. SL 97-0206	05-29-97	06-03-97
H 210=	BROWN	AG DEPT. NAME CHANGE	*R -CH. SL 97-0261	03-03-97	03-18-97
H 211=	CULP	AMEND ENVIRONMENTAL LAWS-2	*R -CH. SL 97-0496	04-22-97	07-29-97
H 227=	HACKNEY	INACTIVE HAZ. SITES RECORDATION	*R -CH. SL 97-0528	04-16-97	06-16-97
H 238=	MITCHELL	FACILITATE ANIMAL WASTE RESEARCH	*HF-POSTPONED INDEFINITELY	03-18-97	04-15-97
H 239	MITCHELL	ENVIRON. MANAGEMENT MEMBERSHIP	R -CH. SL 97-0381	04-10-97	07-29-97
H 240=	MITCHELL	REMOVE ODOR CONTROL STUDY MATCH	*S -REF TO COM ON APPROPR	03-03-97	03-25-97
H 251=	CULP	WELL CONTRACTORS CERTIFICATION	*R -CH. SL 97-0358	06-16-97	06-26-97
H 302	HUNTER H	WILDLIFE/RABIES EMERGENCY	*R -CH. SL 97-0402	05-06-97	07-29-97
H 409=	YONGUE	AGRICULTURAL EMPLOYER APPEALS	R -CH. SL 97-0035	03-24-97	04-03-97
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	05-14-97	06-23-97
H 457	WEATHERLY	AMEND FOREST DEVELOPMENT ACT	*R -CH. SL 97-0352	05-06-97	06-16-97
H 460	CULPEPPER	ABOLISH AQUARIUMS COMMISSION	*R -CH. SL 97-0286	05-06-97	05-19-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	05-06-97	05-29-97
H 515	MORGAN	CLEAN WATER RESPONSIBILITY ACT	*R -CH. SL 97-0458	05-06-97	06-09-97
H 577	WEATHERLY	FORESTER REGISTRATION	*R -CH. SL 98-0157	07-17-97	08-18-98
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	05-06-97	
H 900	**WATSON**	**FEDERAL MATCH REQUIRED-9/30/98-3**	***R -CH. SL 98-0166**	**05-06-97**	**09-29-98**
H 935	BEALL	PROMOTE LLAMA BREEDING	R -CH. SL 97-0084	04-28-97	05-13-97
H 998=	**BROWN**	**FEDERAL MATCH REQUIRED-9/30/98**	***HF-POSTPONED INDEFINITELY**	**06-18-97**	**06-26-97**
H 999	ROGERS	SOIL & WATER COMMISSION/INSPECTIONS	*R -CH. SL 97-0173	05-06-97	05-22-97
H1009=	MORRIS	NOTICE OF HAZARDOUS DISCHARGE	*S -REF TO COM ON AGRICUL&	05-06-97	
H1011=	CAPPS	LOW PRESSURE PIPE EMERG. FUND	*S -RE-REF COM ON AGRICUL&	07-22-97	07-29-97
H1011=	CAPPS	LOW PRESSURE PIPE EMERG. FUND	*S -RE-REF COM ON AGRICUL&	08-19-97	
H1032	ALLRED	AUTHORIZE LANDFILL LINER	*R -CH. SL 97-0374	04-29-97	06-26-97
H1037	ARNOLD	SALE OF CERTAIN EXOTIC MEATS	*S -REF TO COM ON AGRICUL&	05-06-97	

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1055=	**RUSSELL**	**ARBITRATION OF SEED CLAIMS**	***R -CH. SL 98-0210**	**09-14-98**	**09-21-98**
H1059	WRIGHT	CAMA/URBAN WATERFRONT REDEVELOP	*R -CH. SL 97-0337	05-06-97	06-19-97
H1097	**PRESTON**	**FISHERIES REFORM ACT-2**	***R -CH. SL 97-0400**	**06-11-97**	**07-23-97**
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	05-06-97	
H1121	**MCCOMAS**	**BROWNFIELD PROPERTY REUSE ACT**	***R -CH. SL 97-0357**	**06-19-97**	**07-03-97**
H1402	CREECH	NEUSE BUFFERS/OTHER ENV. AMENDS	*R -CH. SL 98-0221	09-07-98	10-27-98
H1410=	PRESTON	EXTEND CORE SOUND MORATORIUM	*H -CH. SL 98-0056	06-18-98	07-07-98
H1415=	HILL	IMPROVE SEDIMENTATION CONTROL	R -CH. SL 98-0099	06-17-98	08-04-98
H1433=	HILL	EXTEND/EXPAND ENV. HEALTH STUDY	R -CH. SL 98-0076	06-17-98	07-28-98
H1448=	PRESTON	MARINE FISHERIES AMENDMENTS	*R -CH. SL 98-0225	09-17-98	09-21-98
H1462=	CULP	CERTAIN SEPTIC TANK DEVICES REQUIRED	*R -CH. SL 98-0126	07-07-98	07-23-98
H1462=	CULP	CERTAIN SEPTIC TANK DEVICES REQUIRED	*R -CH. SL 98-0126	07-27-98	08-06-98
H1472=	HILL	AGENCY RECYCLING/FAMILY FARMS STUDY	*R -CH. SL 98-0223	10-07-98	10-27-98
H1479=	WATSON	LAGOON PHASE-OUT STUDY	*S -REF TO COM ON AGRICUL&	07-13-98	
H1480=	WATSON	SWINE INTEGRATOR REGISTER GROWERS	*R -CH. SL 98-0188	09-24-98	10-08-98
H1483=	MITCHELL	EXPEDITE LOW RISK CLOSURES	*R -CH. SL 98-0161	09-07-98	09-10-98
H1490=	WEATHERLY	EXTEND SUBMERGED LAND CLAIMS	R -CH. SL 98-0179	09-07-98	09-21-98
H1529=	BROWN	HORSE PROMOTION ASSESSMENT	*R -CH. SL 98-0154	07-13-98	07-22-98
S 110	PERDUE	ESTABLISH ENVIRONMENTAL CABINET	*H -REF TO COM ON RULES	02-13-97	02-26-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*R -CH. SL 97-0493	02-17-97	03-18-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*R -CH. SL 97-0493	03-19-97	04-03-97
S 120	KERR	AGRIC COST SHARE FUNDING LIMITS	S -REF TO COM ON AGRICUL&	02-17-97	
S 125=	ODOM	BROWNFIELDS/PROPERTY USE RESTRICT	*R -CH. SL 97-0394	02-17-97	04-22-97
S 126=	ODOM	SOLID WASTE PERMIT REQUIREMENTS	*R -CH. SL 97-0027	02-17-97	03-11-97
S 138=	ODOM	DISSOLVE SANITARY DISTRICT	*R -CH. SL 98-0123	02-17-97	03-04-97
S 138=	ODOM	DISSOLVE SANITARY DISTRICT	*R -CH. SL 98-0123	08-12-98	
S 140=	ODOM	INCREASE ERC MEMBERSHIP	R -CH. SL 97-0031	02-17-97	02-26-97
S 150=	COOPER	INACTIVE HAZARDOUS SITES REPORTS	R -CH. SL 97-0028	02-17-97	03-11-97
S 151=	COOPER	INACTIVE HAZARDOUS SITES INFO	R -CH. SL 97-0053	02-17-97	03-11-97
S 169=	ALBERTSON	ENVIRONMENTAL TECH CORRECTIONS	*H -CAL PURSUANT RULE 36(A)	02-17-97	04-22-97

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S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	02-18-97	03-20-97
S 177=	KINNAIRD	CLEAN WATER TRUST FUNDS/LOANS OK	S -REF TO COM ON AGRICUL&	02-18-97	
S 178=	HORTON	AMEND NATURAL HERITAGE TRUST FUND	*R -CH. SL 97-0366	02-18-97	04-22-97
S 182	KINCAID	WILDLIFE COMM. TEMPORARY RULES	*R -CH. SL 97-0403	02-19-97	04-08-97
S 191=	ALBERTSON	REMOVE ODOR CONTROL STUDY MATCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 192=	ALBERTSON	FACILITATE ANIMAL WASTE RESEARCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 193	**ALBERTSON**	**ON-SITE WASTEWATER SYS.**	***S -RE-REF COM ON APPROPR**	**04-23-97**	**04-28-97**
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	02-19-97	04-28-97
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	07-30-97	
S 195=	ALBERTSON	AG DEPT.NAME CHANGE	S -REF TO COM ON AGRICUL&	02-19-97	
S 221=	HORTON	NITROGEN LIMIT FOR CERTAIN WATERS	S -REF TO COM ON AGRICUL&	02-24-97	
S 259=	ODOM	BACKUP POWER FOR WASTEWATER SYS	S -REF TO COM ON AGRICUL&	02-27-97	
S 261=	ODOM	WELL CONTRACTORS CERTIFICATION	*S -RE-REF COM ON FINANCE	02-27-97	06-03-97
S 266	LEDBETTER	PRODUCTION AND SALE OF RED DEER	*R -CH. SL 97-0142	02-27-97	03-18-97
S 287	**PERDUE**	**MONITOR COASTAL WATER QUALITY**	**S -RE-REF COM ON APPROPR**	**03-03-97**	**03-24-97**
S 477	PERDUE	SEPTIC TANK SYSTEMS BMPS	*S -RE-REF COM ON FINANCE	03-25-97	04-24-97
S 478	KINNAIRD	SWINE FARM SITING ACT-3	S -REF TO COM ON AGRICUL&	03-25-97	
S 537=	JENKINS	ADDITION TO STATE PARKS SYSTEM	*R -CH. SL 97-0276	03-27-97	04-22-97
S 545=	MILLER B	SALE OF NAT. SCI. MUSEUM OBJECTS	H -ASSIGNED TO APP-GGOV	03-27-97	04-15-97
S 671=	ALBERTSON	WASTEWATER IMPROVEMENTS PERMITS	*S -RE-REF COM ON RULES &	04-02-97	05-21-97
S 755=	REEVES	NO LOW-LEVEL FACILITY/FLOOD PLAN	S -REF TO COM ON AGRICUL&	04-08-97	
S 845	ODOM	SCHOOL BUSES FOR SPECIAL OLYMPICS	*R -CH. SL 98-0010	04-15-97	04-24-97
S 859=	LEE	PRESCRIBED BURNING IN FORESTS	*H -REF TO COM ON RULES	04-15-97	04-28-97
S 874=	**KERR**	**RESOLUTION OF SEED CLAIMS**	***S -RE-REF COM ON FINANCE**	**04-15-97**	**06-03-97**
S 918=	PHILLIPS	NOTICE OF HAZARDOUS DISCHARGE	*S -FAILED CONCUR IN COM SUB	04-17-97	04-28-97
S 947	COCHRANE	AMEND INTERBASIN TRANSFERS	*R -CH. SL 97-0524	04-17-97	04-29-97
S 954	WEBSTER	EXOTIC ANIMAL REGISTRY	S -REF TO COM ON AGRICUL&	04-17-97	
S 969	KINNAIRD	AIR QUALITY STANDARD/HOG FARMS	S -REF TO COM ON AGRICUL&	04-21-97	
S 977=	**ALBERTSON**	**SOUTHERN DAIRY COMPACT**	***R -CH. SL 97-0494**	**04-21-97**	**08-14-97**
S 984	ALBERTSON	ENVIROMENTAL POLICY	S -RE-REF COM ON AGRICUL&	08-05-97	

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S 985	MARTIN R	ALTERNATE LANDFILL LINER	S -REF TO COM ON AGRICUL&	04-21-97	
S1002	KINNAIRD	STRENGTHEN MINING ACT	S -REF TO COM ON AGRICUL&	04-21-97	
S1018	**ALBERTSON**	**NUTRIENT/PESTICIDE MGT. EDUCATION**	**S -REF TO COM ON AGRICUL&**	**04-21-97**	
S1022	KINNAIRD	ASPHALT EMISSIONS MONITORING	S -RE-REF COM ON RULES &	04-21-97	07-17-97
S1041=	MILLER B	LOW PRESSURE PIPE EMERG. FUND	S -REF TO COM ON AGRICUL&	04-21-97	
S1043	ALBERTSON	COMPREHENSIVE WATER QUALITY MNGT	S -REF TO COM ON AGRICUL&	04-21-97	
S1265=	BALLANTINE	BEACH RENOURISH/RESERVE FUNDS	S -REF TO COM ON AGRICUL&	05-27-98	
S1274=	ALBERTSON	CHILDHOOD LEAD EXPOSURE AMENDS	*R -CH. SL 98-0209	05-27-98	06-02-98
S1276=	ALBERTSON	EXTEND CORE SOUND MORATORIUM	H -REF TO COM ON ENVIRON	05-27-98	06-02-98
S1284=	ALBERTSON	1998 MARINE FISHERIES AMENDMENTS	*S -RE-REF COM ON FINANCE	05-27-98	09-01-98
S1285=	ALBERTSON	AG. TRANSPORT/TEMP CONSERVATION RULE	*R -CH. SL 98-0165	08-12-98	08-18-98
S1294=	PERDUE	EXTEND/EXPAND ENV. HEALTH STUDY	S -RE-REF COM ON APPROPR	05-27-98	06-09-98
S1299=	COCHRANE	INTERBASIN TRANSFER AMENDMENTS	*R -CH. SL 98-0168	05-27-98	08-10-98
S1302=	ODOM	SWINE INTEGRATOR REGISTER GROWERS	S -REF TO COM ON AGRICUL&	05-27-98	
S1303=	ODOM	CERTAIN SEPTIC TANK DEVICES REQUIRED	*H -REF TO COM ON ENVIRON	05-27-98	06-23-98
S1304=	ODOM	LAGOON PHASE OUT STUDY	S -REF TO COM ON AGRICUL&	05-27-98	
S1313=	KINNAIRD	IMPROVE SEDIMENTATION CONTROL	H -REF TO COM ON RULES	05-27-98	06-09-98
S1314=	KINNAIRD	AGENCY RECEIPTS FOR RECYCLING	*H -CAL PURSUANT RULE 36(A)	05-27-98	07-15-98
S1315=	KINNAIRD	LAGOON CLOSURE STUDY	S -REF TO COM ON AGRICUL&	05-27-98	
S1329=	ODOM	WATER QUALITY FEES/CDE LUST CLEANUPS	S -REF TO COM ON AGRICUL&	05-27-98	
S1331=	HORTON	END CDE LUST CLEANUPS	S -REF TO COM ON AGRICUL&	05-27-98	
S1373	MARTIN R	DISAPPROVE TAR-PAMLICO BASIN RULE	*R -CH. SL 98-0138	05-27-98	07-14-98
S1565=	**ALBERTSON**	**POULTRY/RATITE DEALERS REGISTRATION**	**S -RE-REF COM ON APPROPR**	**06-01-98**	**06-17-98**
S1565=	**ALBERTSON**	**POULTRY/RATITE DEALERS REGISTRATION**	**S -RE-REF COM ON APPROPR**	**06-22-98**	**07-14-98**
S1598	HORTON	DISAPPROVED LUST RISK-ASSESSMENT RUL	S -REF TO COM ON AGRICUL&	06-30-98	

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SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 26, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, May 26, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were thirteen committee members present.

Senator Albertson said that the committee would hear two presentations as follow:

KIMBERLY P. CRAWFORD, Ocean Policy Specialist and Coordinator of Current Planning, Division of Coastal Management, DENR, gave a presentation on the status of Chevron's proposed offshore exploratory drilling for oil and natural gas.

DR. RICHARD A LUETTICH, Associate Professor, Institute for Marine Sciences, University of North Carolina, gave a presentation on forecast of water quality in the Neuse River for the summer and fall of 1998. Assisting Dr. Luettich in answering questions was Dr. Larry Crowder of the Duke University Marine Laboratory.

Copies of all hand-outs are attached to these minutes.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, May 26, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

KIMBERLY P. CRAWFORD, Ocean Policy Specialist and Coordinator of Current Planning, Division of Coastal Management, DENR

Presentation on Status of Chevron's proposed offshore exploratory drilling for oil and natural gas

DR. RICHARD A. LUETTICH, Associate Professor, Institute for Marine Sciences, University of North Carolina

Presentation on forecast of water quality in the Neuse River for the Summer and Fall of 1998

Chevron's Offshore Drilling Proposal

- Chevron has notified the state that it wants to drill one exploratory well in the summer of 2000 in federal waters offshore North Carolina, approximately 45 miles from Cape Hatteras.

- Chevron's geologists say there is only a 7% chance of a hydrocarbon discovery, and only a 2% chance of a commercial find. A commercial find could contain the equivalent of 5 to 6 trillion cubic feet of natural gas.

- A dynamically positioned drillship would be used to drill the exploratory well. Water depth at the drillsite in Block 510 is 2,130 feet.

- If Chevron obtains the necessary permits, it would take approximately 114 days to drill an exploratory well. Onshore facilities would be located in Morehead City.

- Chevron has not issued a formal plan of exploration (POE) and there is no time clock running. The company has said it plans to submit a POE in late 1998 or early 1999.

- Chevron must receive several federal permits to drill: a drilling permit from the Interior Department's Minerals Management Service (MMS) and air quality and ocean discharge permits from the Environmental Protection Agency. Federal agencies CANNOT issue these permits unless North Carolina finds Chevron's POE and discharge permit consistent with its coastal management program.

- If the State finds the POE or discharge permit inconsistent, the company can appeal to the U.S. Secretary of Commerce, who has the authority to overturn the state's decision.

- The Coastal Zone Management Act gives the state authority to conduct a consistency review on a drilling proposal in federal waters.

- North Carolina issued a favorable federal consistency decision on Block 510 in 1982. However, the State has told Chevron and MMS that it wants to conduct a new consistency review in light of new scientific information, new energy policies and changes in drilling technology. MMS has notified Chevron that the company must submit a revised POE.

- The Outer Continental Shelf Lands Act (OCSLA) gives the governor 20 days to comment on a POE. The Secretary of the Interior may consider the governor's comments when deciding whether to approve, disapprove or conditionally approve a POE.

- In 1996, the Coastal Resources Commission adopted amendments to the state's energy policies, which added drillships and onshore support facilities to the definition of "energy facilities" and specified areas that must be avoided when siting energy facilities. Governor Hunt issued Executive Order 121 in November 1997, putting the rules into effect immediately. The rules have been formally approved by NOAA for inclusion in the N.C. Coastal Management Program.

- In February, DENR Secretary Wayne McDevitt formed a citizen advisory committee to help identify issues of public concern relating to Chevron's proposal to drill for oil and gas on the Outer Continental Shelf offshore North Carolina.

- The Division of Coastal Management (DCM) also formed a technical review team to help identify new studies needed to enable the state to review the POE.

- DCM will sponsor a series of public meetings on the coast in June to help inform coastal residents about the issue.

N&O – Thurs., June 18, 1998

Chevron defends oil-drilling proposal

Coastal residents who oppose exploratory drilling off Hatteras Island ask questions and give their views at meetings in Ocracoke and Manteo.

By Estes Thompson
THE ASSOCIATED PRESS

OCRACOKE — Opponents of a Chevron proposal to drill an exploratory oil and gas well about 40 miles offshore sat quiet Wednesday as the oil company explained its proposal, then pounced with their questions and concerns.

About 100 people sat on folding chairs in the tiny gym of Ocracoke School for the second of three public information meetings on the Chevron proposal.

Earlier, opponents carrying signs that said "[illegible]r Banks says No Thanks" and "Oil and [illegible] Don't Mix," chanted as people arrived for the meeting on this Hyde County island of about 600 permanent residents.

"If we're lucky, it's a dry hole," said Libby Hicks, a glass artist who lives on the island. "There are many places in the world that are ruined and this place is not. It's not worth the risk."

Visitors come to the island, which depends on fishing and tourism, to see the village laid out around its harbor, called Silver Lake, eat in restaurants, kayak in Pamlico Sound and play on miles of undeveloped and nearly deserted beaches in the national seashore that dominates the island. Some visitors come just to be on a real island that can be reached only by air, private boat or state-run ferries.

One woman who stormed out of the meeting early interrupted the presentations by a Chevron engineer to say, "You show the good parts, but you don't show the bad parts."

Chevron engineer Sandi Fury of New Orleans said her company believes in protecting the environment and said the government closely regulates oil and gas drilling.

While there is only a 2 percent chance of finding a commercially viable deposit of oil or gas, Fury said, the potential is that the site in 2,500 feet of rough water off Hatteras Island could produce 1.5 billion barrels of oil or 5 trillion to 9 trillion cubic feet of natural gas.

"It's an energy source that's extremely large," she said.

On Tuesday, the first of three meetings was held in Manteo.

A third meeting is scheduled for today in Beaufort.

About 300 people crammed into a hall for the Manteo meeting and more had to be turned away because of fire code limits, said Alison Davis of the state's Coastal Management Division.

At the Manteo hearing, Rick Spencer listed oil spills and valve malfunctions in California that he blamed on Chevron, which is based in that state.

"The oil industry is not a good neighbor," he said. "If they're going to treat the people in their own state like that, how are they going to treat us?"

Derb Carter, a Southern Environmental Law Center lawyer, asked whether Chevron would pull out if it did not get state approval. The state must decide whether the plan is consistent with its coastal and environmental policies after Chevron submits a plan in December.

"My best answer to you is we spent significant dollars to acquire the leases," said Fury. "I can't state at this point in time that Chevron would abandon its plans. Based on the statistics, I think we're not going to find a commercial development."

Chevron said it will take 110 days to drill the exploratory wells starting in the spring of 2000.

Chevron said there would be minimal shoreline activity at Morehead City, where the land base would be located for the $60 million project.

Most of the people at the hearing, however, were concerned about the impact on northern beaches.

"We're scared of it," said Sterling Webster, chairman of the board of directors of the Outer Banks Chamber of Commerce. "It wouldn't take but one spill to be a disaster for 1,200 businesses."

Chevron USA announced in September that it intends to seek permits to drill an exploratory well.

Initially, the oil company told the state it wanted to explore in one block of the Manteo Exploration Units but had not decided if it was interested in its own block or one owned by Mobil Oil Corp.

In 1990, North Carolina denied Mobil permission to drill about 9,000 feet from where Chevron hopes to drill, because it did not provide adequate information on the drilling's socioeconomic impact.

In 1982, the state gave Chevron preliminary approval to drill in one area, but the company never pursued it. Although technically the approval still stands, state regulators said Chevron must update its plans and environmental reviews.

North Carolina cannot veto the project outright, but can stymie issuance of federal permits if it decides the drilling proposal isn't in line with the state's coastal management rules.

Neuse River Estuary MODMON

An Interdisciplinary Research Project

funded by

the North Carolina Department of Environment and Natural Resources

and

The University of North Carolina Water Resources Research Institute

Rick Luettich, Jay Pinckney, Hans Paerl and John Wells, University of North Carolina at Chapel Hill, Institute of Marine Sciences

SUMMARY

The Neuse River Basin has experienced unprecedented growth in the past 50 years. Changing and diversifying land use practices that include forestry, agriculture, industry, wetlands and large urban areas have placed increasing pressure on aquatic and estuarine habitats to accommodate human induced inputs. The result has been a very evident, long term degradation of water quality in the Neuse River Estuary.

The State of North Carolina has recognized this problem and has designated water quality improvement as an issue of highest priority (e.g., the Neuse River Nutrient Sensitive Waters Management Plan, EMC, June 1997). As a first step toward reversing the downward water quality spiral in the Neuse, the North Carolina General Assembly has enacted legislation requiring a 30 percent reduction in nitrogen loading to the estuary. While the scientific/technical community generally believes this will yield noticeable water quality improvements, we currently cannot *predict* either the extent of its effectiveness or optimal ways in which it should be implemented. Even more disturbing is the likelihood that we will not be able to determine the effectiveness of these measures *after the fact* due to the significant year to year variations in water quality that routinely occur in the Neuse.

Success in predicting or even identifying the effects of significant management actions in a complex system like the Neuse River Estuary will require an understanding of the linkages between basin-wide loading and ecosystem response. The Neuse River Estuary MODeling and MONitoring (MODMON) project consists of a multi-institutional team of investigators that are collaborating to understand the critical processes governing these linkages and to develop models for use by state officials to assist future management decisions.

Primary funding for the MODMON project has come from a one-time allocation in 1996 by the North Carolina General Assembly to the Department of Environment and Natural Resources. This funding has been sufficient for startup modeling efforts and one year of field work (June 1997 - May 1998). However, understanding a system with the large year to year variations seen by the Neuse River Estuary will be impossible without continued funding for at least the next 5 years. This time will allow modeling and monitoring that resolves some of the natural variations in the system and that spans pre- and post- management periods. The results should include a much clearer understanding of the Neuse system, a rigorous assessment of current model predictions of the effects of nutrient load reduction in the system and the availability of more accurate model predictions to design future management actions.

Students at West Carteret High School participate in oxygen uptake experiments using sediment cores collected from the Neuse River as a part of the MODMON project.

Phytoplankton bloom in the Neuse River Estuary

THE PROBLEM

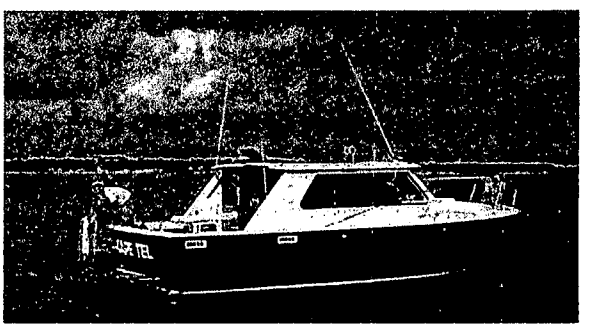
The slow flowing waters of the Neuse River Estuary, in combination with the increased nutrient (primarily nitrogen) loading of recent years, provide optimal conditions for enhanced phytoplankton (algae) growth. When phytoplankton grow faster than consumption by animal grazers, massive blooms can occur that color the water green, yellow or red, are malodorous, cause fouling and even release toxins. Environmental constraints eventually cause these blooms to die. However, in slowly flowing waters the dying blooms sink to the bottom and are either decomposed immediately or stored in the bottom sediments and decomposed later. When decomposition takes place, it removes large amounts of oxygen from the water column and may overwhelm the rate at which oxygen is mixed downward from the water surface. This is especially true during times when the water column is stratified (fresh runoff water overlying salty sound water) and/ or under calm conditions when little mixing energy is available from the wind. Under these conditions the lower part of the water column can exhibit dangerously low oxygen levels which, if maintained for long enough, create stress for fish and shellfish. Massive fish and shellfish kills have been linked to oxygen stress either directly or indirectly due to increased susceptibility to disease or algal toxins.

CRITICAL NEEDS

The 30 percent reduction in nitrogen loading to the Neuse River Estuary legislated by the North Carolina General Assembly should yield noticeable long term water quality improvements. Yet, we currently cannot predict *before hand* either the extent of its effectiveness or optimal ways in which it should be implemented. Even more disturbing is the likelihood that we will not be able to determine the effectiveness of these measures *after the fact* due to the significant year to year variations in water quality that routinely occur in the Neuse.

The Neuse River Estuary MODeling and MONitoring (MODMON) project has assembled an internationally recognized group of scientists from academia, state and federal government and private industry with expertise in modeling, marine physics, nutrient cycling, geochemistry, geology, plankton dynamics and fisheries ecology. The collaborative efforts of this unique group have been focused on water quality problems in the Neuse River Estuary and will lead to better understanding of critical processes that link basin-wide nutrient loading to ecosystem response and to improved models that can be used by state officials to make management decisions. However, success in understanding and ultimately managing a system that experiences considerable year to year variability like the Neuse (e.g., the 1995 fish kills and the 1996 hurricanes), will require a program such as MODMON for at least the next 5 years as well as continued monitoring programs after that. This need is critical if we hope to understand the effects of current management actions and to predict future system responses to proposed management strategies.

With the present funding for the MODMON project, all monitoring efforts are scheduled to end in May of 1998. The modeling and data analysis will end soon after. When completed, we will have a comprehensive data set and water quality models calibrated for a relatively normal hydrologic year prior to the implementation of any management actions. However, what we particularly need is the ability to manage the Neuse for extreme years and to definitively understand the effects of the upcoming management actions. Thus it is critical to continue MODMON for the next several years to provide data and modeling that encompasses the natural variability in the system and that spans pre- and post- management periods. The scientific group and most of the necessary infrastructure are in place to continue these efforts, but we require continued funding to allow this to happen.

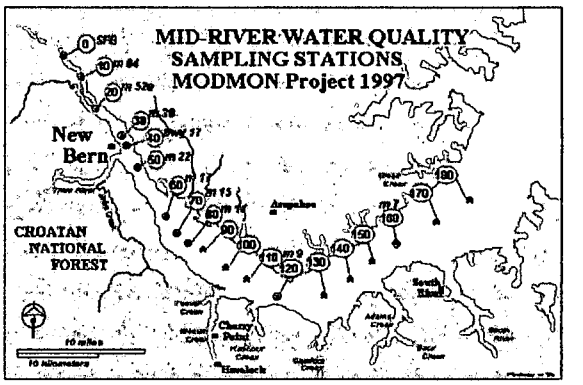


UNC research vessel conducting a water quality survey on the Neuse River

MODMON PROGRESS, MAY - OCTOBER 1997

The MODMON team includes scientists from UNC - Chapel Hill, NCSU, Duke, ECU, UNC - Charlotte, the US Geological Survey, the state Division of Water Quality and the Weyerhaeuser Corp. While this group has been in place for only a few months, significant progress has occurred toward MODMON project goals. Specifically, we have:

- convened a coordinating workshop at the UNC Institute of Marine Sciences, attended by over 30 North Carolina scientists, to acquaint researchers with overall research goals in the Neuse River Estuary and to establish a framework of active communication and collaboration that has characterized MODMON to date,
- established a MODMON home page at: http://www.marine.unc.edu/neuse/modmon containing details of this project and presenting latest and archived results in graphical form from both the modeling and monitoring phases,
- collected sediment samples from 185 locations between New Bern and the mouth of the Neuse to determine physical characteristics and chemical properties of the bottom,
- collected 648 cores between New Bern and the mouth of the Neuse to determine the bottom-dwelling animal resources and community composition. Initial sampling in June revealed a dense cover of juvenile bivalves over virtually the entire bottom. Sampling in August showed living bivalves persisting only in well-oxygenated shallow water areas.
- conducted bi-weekly oxygen surveys and fish trawls in a 10 km stretch of the Neuse River Estuary near Cherry Point. Significant fish catches occurred only in water having dissolved oxygen concentrations above 5 mg/l. The benthic animal surveys and the fish trawls together indicate that a substantial amount of bottom area (as much as 60 - 80 %) is routinely unavailable to fish and shellfish due to low dissolved oxygen concentrations in summer and is subsequently degraded as fish habitat because of the loss of invertebrate prey on the bottom;
- conducted oxygen uptake experiments on intact sediment cores to determine rates of sediment oxygen demand;
- obtained 2 months of surface and near bottom water level, salinity, temperature and current velocity data near Minnesott Beach.



- conducted weekly surveys at 17 mid-river locations stretching from the Streets Ferry bridge to the mouth of Neuse River Estuary consisting of dissolved oxygen, salinity, temperature and various additional water quality and nutrient parameters. These data are typically made available in graphical form at the MODMON web site within 24 hours of being collected,
- conducted weekly surveys across the river at up to six locations between New Bern and the mouth of the Neuse River Estuary consisting of dissolved oxygen, salinity, temperature and chlorophyll *a*. These data are also available graphically at the MODMON web site. Together with the mid-river data, we are able to construct weekly maps of the extent of low oxygen conditions throughout much of the Neuse,
- initiated calibration and error propagation studies with the two-dimensional, laterally-averaged circulation/water quality model CEQUAL-W2. Model results and animated simulations can be reached from the MODMON web site,
- constructed and analyzed 16 seasonal models of nitrogen cycling in the Neuse River Estuary to assess variability in the fate of nitrogen loading and the relative importance of loading and recycling,
- held the first of three planned workshops to evaluate alternative strategies for water quality modeling in the Neuse River Estuary,
- initiated an outreach program involving students at West Carteret High School. Students conducted oxygen uptake experiments using sediment cores from the Neuse River Estuary and are analyzing the data in the context of simple calculus equations. Final results will be displayed on the MODMON web site. We believe this outreach effort is an important opportunity to educate the public on critical water quality issues in North Carolina.

THE NEWS & OBSERVER
SATURDAY, JUNE 13, 1998

MORATORIUM EXTENSION DISMAYS OIL INDUSTRY; ENVIRONMENTALISTS HOPED FOR PERMANENT BAN

Coasts safe from drilling 10 more years

THE NEW YORK TIMES

MONTEREY, Calif. — President Clinton, navigating a middle course between environmentalists and oil companies, announced Friday a 10-year extension of the current moratorium on oil drilling off virtually all U.S. coastlines.

Clinton also placed several existing marine sanctuaries permanently off-limits to oil exploration. The areas include the Channel Islands and Monterey Bay sanctuaries in California, the Florida Keys, Gray's Reef in Georgia and the Olympic Coast sanctuary off Washington state.

The moratorium does not, however, affect areas off the Texas and Louisiana coasts, where extensive drilling has been going on for years, nor does it protect any new areas not already covered by the drilling ban first imposed by President Bush in 1990, including the coastlines of the Southeast.

Al Gore paddles in Monterey Bay, Calif., where President Clinton announced legislation to extend constraints on oil exploration.

THE ASSOCIATED PRESS

Clinton, calling the oceans "the world's last great frontier," also signed an executive order Friday to expand programs to preserve and restore coral reefs. He proposed new spending of $6 million to restore 18 damaged reefs in Florida, the Virgin Islands, Puerto Rico, Guam and Hawaii.

Although there have been relatively few drilling-related oil spills in American waters, Clinton said, "Even under the best of circumstances, is it really worth the risk?"

With worldwide oil supplies plentiful and domestic gasoline prices at near-historic lows, extending the moratorium carries little political risk for the president.

But the oil industry reacted harshly, saying that banning offshore exploration worsens the nation's dependence on imported oil.

The current moratorium is in effect through 2002; the president's action would extend that period to 2012.

Environmentalists would have preferred a permanent ban. Mark Massara, director of the Sierra Club's coastal programs, said the president's action "doesn't go far enough.".

Because Clinton used an executive order to extend the ban, Friday's action could be rescinded by a future president or revoked in a national oil emergency.

Todd Steiner of the Earth Island Institute called Clinton's action "a drop in the ocean."

"He's giving us what we already had — a moratorium on drilling," Steiner added.

Neuse River Estuary Water Quality and Fish Kills Advisory for Summer/Fall 1998

Department of Environment and Natural Resources
Science Advisory Council on Water Resources and Coastal Fisheries Management

The rivers and estuaries of coastal North Carolina have experienced unprecedented increases in nutrient loading over the last 50 years. Changes in watershed land use, increased human population and exponential growth of intensive animal operations have all contributed to nutrient over-enrichment. A proliferation of water quality problems have resulted in our rivers and estuaries, including nuisance algal blooms, anoxic water and fish kills.

While there are currently only limited data on which to make conclusions, it appears that severe water quality problems in the Neuse River Estuary originate with excessive winter and spring rains and are exacerbated by above average rains during the summer and early fall (Paerl et al., 1998). The rains deliver large pulses of nutrient-rich discharge to the estuary and algae "bloom" rapidly in response to these nutrients.

One mechanism for fish kills occurs when the algal blooms die and sink to the bottom where degradation and decomposition consume oxygen at a high rate. Fresh water runoff coupled with hot and calm weather encourages stagnation and stratification (fresh water floating downstream over the top of saltier water). The stratification slows the rate of oxygen replenishment from the atmosphere. If these conditions persist for long periods of time (days to weeks), the water column, particularly the bottom waters, become oxygen depleted. Waters with low or no dissolved oxygen are know as "dead waters" because they are usually devoid of fin fish and shellfish. Large dead water zones can overlap directly with critical fin fish and shellfish feeding and nursery areas, resulting in a reduction of suitable habitats. When fin fish and shellfish are exposed to these stressful conditions, they become more susceptible to parasites, disease and infections and they also die directly from a lack of oxygen (Winn and Knott, 1992; Lenihan and Peterson, 1998). Although fish will avoid dead water, strong winds can quickly push this water into creeks and shallow areas near shore. Fish that are fleeing the dead water may become trapped along the shoreline or in the creeks with no way to escape.

Sudden kills of certain fish species (primarily menhaden) have also been correlated with the presence of the dinoflagellate *Pfiesteria piscicida* and similar *Pfiesteria*-like organisms. While a wide variety of fish have been shown to be susceptible to *Pfiesteria piscicida* when they are cultured together in the laboratory, little is definitively known about the interplay between fish species and *Pfiesteria* in the wild (The Raleigh Report 1998). It is known, however, that these organisms graze on other algae and therefore that their growth can be stimulated by nutrient induced algal blooms. It is also quite possible that stress caused by low oxygen conditions makes fish more susceptible to attacks from organisms such as *Pfiesteria,* (Burkholder et al., 1995).

We believe that the summer and fall of 1998 may be shaping up as one of significant water quality problems since the record El Nino rainfalls of this winter and spring have provided a strong nutrient push to the Neuse River Estuary.

We strongly recommend continuation of an intensive long term monitoring and modeling program for the Neuse. Only with a well coordinated and thorough data collection effort spanning a number of different runoff/loading seasons coupled with the quantitative analysis that rigorous modeling can provide, can we hope to sort out the mechanisms and chain of events that lead to fish kills, be able to predict with some degree of confidence how, why and where these events will occur, and be able to separate the effects of natural weather variations from nutrient management actions in stimulating or controlling these events.

References:

Burkholder, J., H.B. Glasgow and C.W. Hobb. 1995. Fish kills linked to a toxic ambush-predator dinoflagellate: distribution and environmental conditions. Marine Ecology Progress Series 124:43-61.

Lenihan, H.S. and C.H. Peterson. 1998. How habitat degradation through fishery disturbance enhances impacts of hypoxia on oyster reefs. Ecological Applications, 8(1):128-140.

Paerl, H., J. Pinckney, J. Fear and B. Peierls. 1998. Ecosystem responses to internal and watershed organic matter loading: consequences for hypoxia in the eutrophying Neuse River Estuary, North Carolina, USA. Marine Ecology Progress Series, in press.

The Raleigh Report 1998: *Pfiesteria* research needs and management actions, Recommendations of an expert panel convened December 4-5, 1997, Research Triangle Park, NC, Special Report Series No. 19, The Water Resources Research Institute, Raleigh, NC, 17p.

Winn, R. and D. Knott. 1992. An evaluation of the survival of experimental populations exposed to hypoxia in the Savannah River Estuary, Marine Ecology Progress Series, 88:161-179.

OCS Technical Reviews

NC-FUNDED REVIEWS/STUDIES

- **Study of Pelagic Aviafauna (Seabirds) at "The Point"**
  Dave Lee, NC Museum of Natural Sciences

- **Distribution of Larval Fishes from the Outer Continental Shelf and Adjacent Gulf Stream Off Cape Hatteras, NC**
  National Marine Fisheries Service, Beaufort Lab

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  Mac Currin, recreational fishing instructor (former state employee)

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  (Dependent on funding in FY 99)

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  NC State University

- **Data Inventory Related to the Hatteras Middle Slope ("The Point") Area**
  NC DCM, NC NERR Program

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D. Holmes	DENR
Paul Deem	N.C. Agribusiness
John Cyrus	N.C. State Grange
[illegible]	San Mar Brewing Co
[illegible]	[illegible]
Rick Wetherington	UNC Chapel Hill
Larry Crowder	Duke University
Kim Smith	NCLM
K. ROGERS	DENR
Meghann Moore	Sierra Club
David Knight	Sierra Club
Molly Diggins	NC Sierra Club
Henry M Lancaster	DENR
Donnie Herbert	State Planning
Johnny Gray	OSBM
Bob Slocum	NC FORESTRY ASSOCIATION
Preston Howard	NC DWQ
Michelle Cook	Weyerhaeuser
Amy Fullbright	Hunton & Williams
Dan McLawhorn	DENR

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

May 28, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, May 28, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were twelve committee members present.

The committee heard a presentation on the Update of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy by:

HENRY M. LANCASTER, DEPUTY SECRETARY, Department of Environment and Natural Resources; and

ELIZABETH A MCGEE, SUPERVISOR, Supervisor, Management Planning Development Unit, Water Quality Section, Division of Water Quality, Department of Environment and Natural Resources.

Copies of all hand-outs are attached to these minutes.

A presentation on proposed new federal air quality standards for ozone and the potential impact of those standards on the State had been scheduled by Alan W. Klimek, Director, Division of Air Quality, Department of Environment and Natural Resources; however, due to a lack of time, this presentation was not heard.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE COMMITTEE ON AGRICULTURE, ENVIRONMENT, AND NATURAL RESOURCES

Agenda

Wednesday 28 May 1998

1. Call to order

2. Remarks by Chair

3. Update on the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy

   Henry M. Lancaster, Deputy Secretary
   Department of Environment and Natural Resources

   Elizabeth A. McGee, Supervisor
   Management Planning Development Unit, Water Quality Section, Division of Water Quality, DENR

4. Update on proposed new federal air quality standards for ozone and the potential impact of those standards on the State

   Alan W. Klimek, Director
   Division of Air Quality, DENR

5. Committee discussion

6. Adjourn

EDITORIAL

Keeping it clean

Agriculture garners a lot of negative publicity whenever the environment is harmed, but Gov. Jim Hunt took time last week to honor an Efland farm practicing conservation techniques.

A time existed not too long ago when the farmer was held up as a symbol of what had made America great.

Folk songs, books and movies hailed the men, women and families who tilled the soil, raised crops, fought Mother Nature and fed the globe. The farmer was seen as a living example of hard work, selflessness, dedication and other American ideals.

But that proud image lost a bit of its sheen in recent decades.

Environmental studies revealed that many agricultural practices, from large-scale spraying of pesticides and insecticides to improper tilling, harmed surrounding waterways, land, animals and people. When overflowing waste lagoons collapsed a couple of years ago in North Carolina, the resulting damage to streams and surrounding property prompted a public outcry and a statewide moratorium on new hog farms.

Agricultural researchers have responded to the critical news by proposing and perfecting new techniques to lessen the negative environmental impacts. Many farmers learned from those lessons and have been adopting those methods in their farming practices.

The Shambley family, who run an 838-acre dairy farm near Efland, paid attention to the research findings. They sought out the help of local, state and federal conservation agencies. No-till replanting, turning cow waste into fertilizer and other up-to-date agricultural techniques, helped them save their soil and keep nearby water clean.

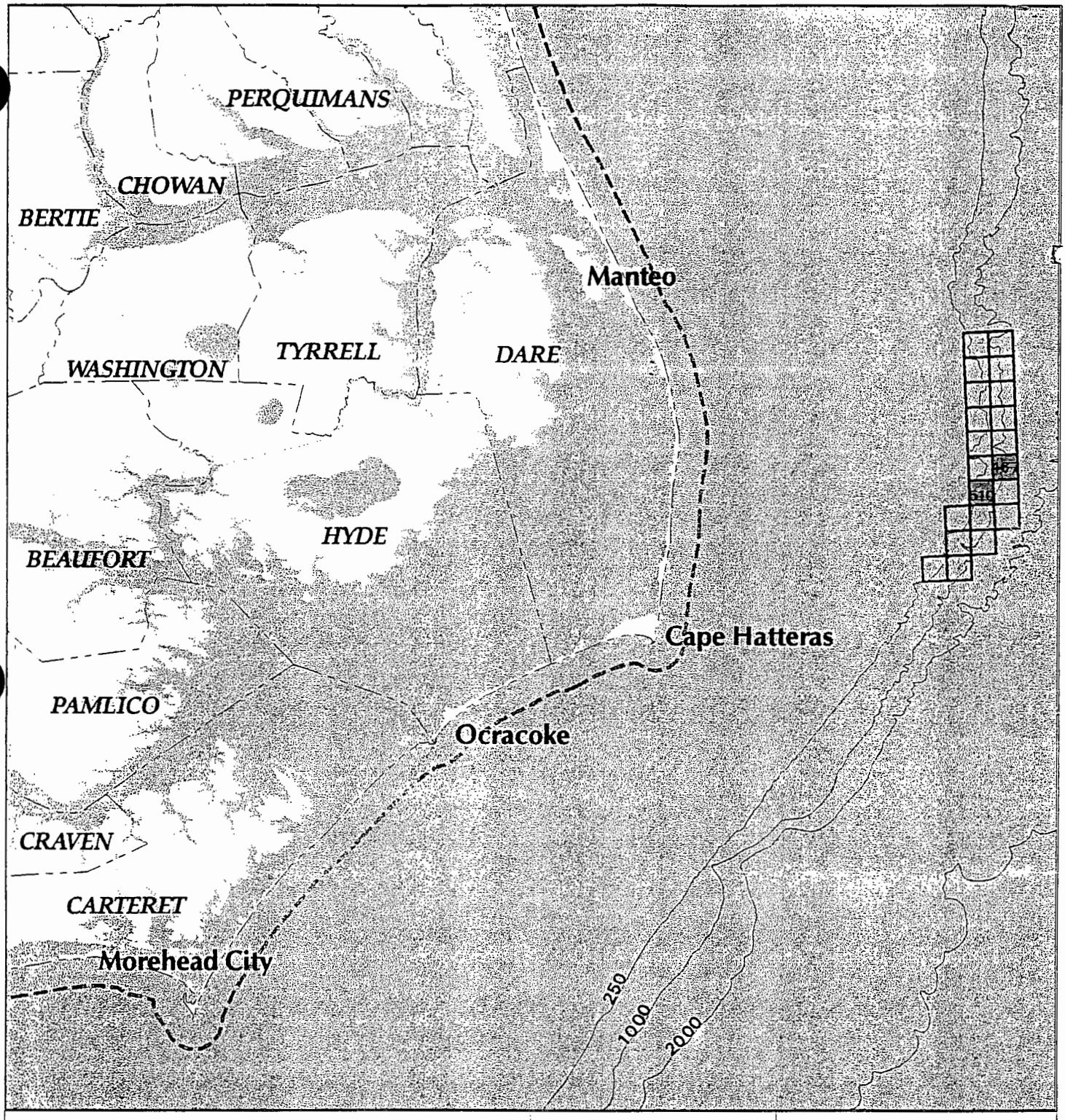
While the changes were costly, they paid off in healthy and productive cows and profits. The Shambley farm is one of the top 10 milk producers in the three-state area. Each of the 150 or so Holsteins produces a whopping 26,351 pounds of milk, on average, per year.

State agricultural officials took notice last week by awarding the two generations of Shambleys who run the farm with the 1998 North Carolina Conservation Farm Family Award. The award is given annually to a family farm that practices conservation techniques.

N.C. Agriculture Commissioner Jim Graham noted the recent criticism of farmers during speeches to mark the award. "We must never forget that food and agriculture go hand in hand," he told the small crowd that had gathered on the Shambley farm. "When people say 'agriculture,' some frown on it, but they don't frown on it when the food comes."

Conservation and agriculture can be mentioned in the same breath, Gov. Jim Hunt said. "While we've got to make a living, we also have to do it in the right way. They're consistently finding ways to do it better. They are true stewards of the land and servants of God."

We should all hoist a glass of milk to the Shambleys for putting into practice what many more preach.



Manteo Exploration Unit and Vicinity

- Water
- County Boundary
- 3 Mile State Jurisdictional Boundary
- Potential OCS Exploration Areas
- Manteo Exploration Unit
- Bathymetry (in meters)

This map comprises information from multiple sources. Refer to the legend for source scale of each feature. This map is for illustrative purposes only and should not be used for regulatory decisions. DCM assumes no liability for damages caused by inaccuracies in this map or supporting data.

For more information contact the NC Division of Coastal Management.

Created 29 Oct 97

NC State Plane Coordinate System
Zone 4901, NAD 27

20 40 MILES

Chevron's Offshore Drilling Proposal

- Chevron has notified the state that it wants to drill one exploratory well in the summer of 2000 in federal waters offshore North Carolina, approximately 45 miles from Cape Hatteras.

- Chevron's geologists say there is only a 7% chance of a hydrocarbon discovery, and only a 2% chance of a commercial find. A commercial find could contain the equivalent of 5 to 6 trillion cubic feet of natural gas.

- A dynamically positioned drillship would be used to drill the exploratory well. Water depth at the drillsite in Block 510 is 2,130 feet.

- If Chevron obtains the necessary permits, it would take approximately 114 days to drill an exploratory well. Onshore facilities would be located in Morehead City.

- Chevron has not issued a formal plan of exploration (POE) and there is no time clock running. The company has said it plans to submit a POE in late 1998 or early 1999.

- Chevron must receive several federal permits to drill: a drilling permit from the Interior Department's Minerals Management Service (MMS) and air quality and ocean discharge permits from the Environmental Protection Agency. Federal agencies CANNOT issue these permits unless North Carolina finds Chevron's POE and discharge permit consistent with its coastal management program.

- If the State finds the POE or discharge permit inconsistent, the company can appeal to the U.S. Secretary of Commerce, who has the authority to overturn the state's decision.

- The Coastal Zone Management Act gives the state authority to conduct a consistency review on a drilling proposal in federal waters.

- North Carolina issued a favorable federal consistency decision on Block 510 in 1982. However, the State has told Chevron and MMS that it wants to conduct a new consistency review in light of new scientific information, new energy policies and changes in drilling technology. MMS has notified Chevron that the company must submit a revised POE.

- The Outer Continental Shelf Lands Act (OCSLA) gives the governor 20 days to comment on a POE. The Secretary of the Interior may consider the governor's comments when deciding whether to approve, disapprove or conditionally approve a POE.

- In 1996, the Coastal Resources Commission adopted amendments to the state's energy policies, which added drillships and onshore support facilities to the definition of "energy facilities" and specified areas that must be avoided when siting energy facilities. Governor Hunt issued Executive Order 121 in November 1997, putting the rules into effect immediately. The rules have been formally approved by NOAA for inclusion in the N.C. Coastal Management Program.

- In February, DENR Secretary Wayne McDevitt formed a citizen advisory committee to help identify issues of public concern relating to Chevron's proposal to drill for oil and gas on the Outer Continental Shelf offshore North Carolina.

- The Division of Coastal Management (DCM) also formed a technical review team to help identify new studies needed to enable the state to review the POE.

- DCM will sponsor a series of public meetings on the coast in June to help inform coastal residents about the issue.

OCS Technical Reviews

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Outlook for Neuse River Water Quality Summer/Fall 1998

Rick Luettich

Associate Professor of Marine Sciences and Environmental Sciences and Engineering, UNC Chapel Hill

Department of Enviroment and Natural Resources Science Advisory Council on Water Resources and Coastal Fisheries Management

Science Advisory Council on Water Resources and Coastal Fisheries Management

Established by the General Assembly, 1995

Henry Lancaster - rep. DENR Secretary

Dr. Jonny Wynne (NCSU) - rep. Dean of Sc Ag & Life Sci.

Dr. Mark Brinson (ECU) - wetlands

Dr. Jim Easley (NCSU) - resource economics

Dr. Rick Luettich (UNC) - physical modeling

Dr. Michael Orbach (DUML) - social sciences

Dr. Ken Reckhow (DU) - water quality

Dr. Bill Kirby-Smith (DUML) - coastal fisheries

The 'black' Neuse

September 1978

Aid for Neuse pledg

August 1979

Fishermen want some answers

Disease attacks fish

RALEIGH, N.C. (AP) — A severe outbreak of red sore disease, a pollution-related infection that attacks commercial and sport fish, is occurring in northeastern North Carolina waters, state biologists said Thursday.

Representatives of the N.C. Wildlife Resources Commission and the state Division of Marine Fisheries said the outbreak this summer in the Chowan River-Albemarle Sound drainage system is the most extensive in five years.

Extensive Neuse probe set

Jan 1979

to find pollution source

April 1980

Hearing slated

on Neuse ills

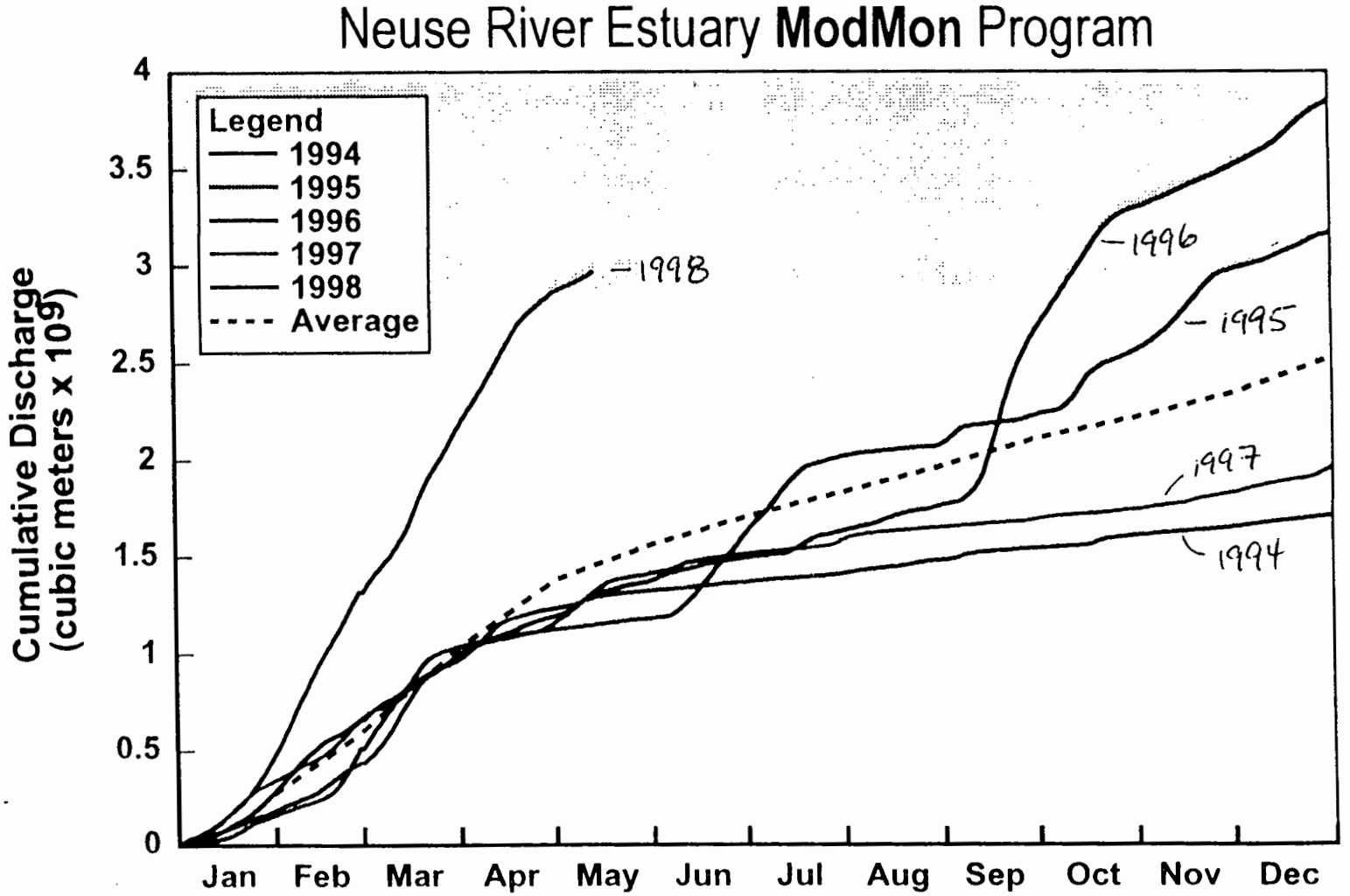
Nov 1979

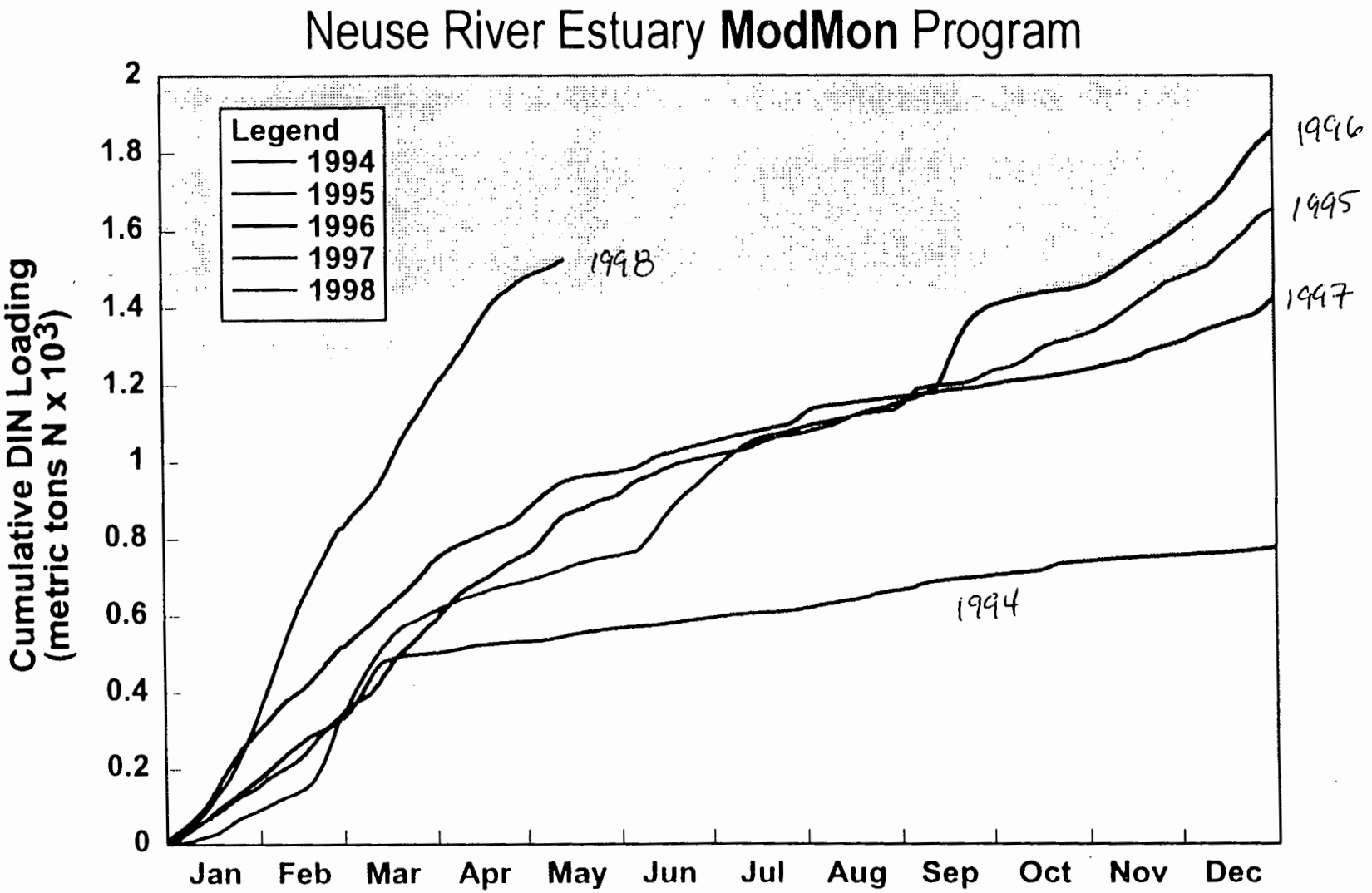
Fishermen want all rivers cleaned up

Algae bloom colors The Neuse

7-19-80

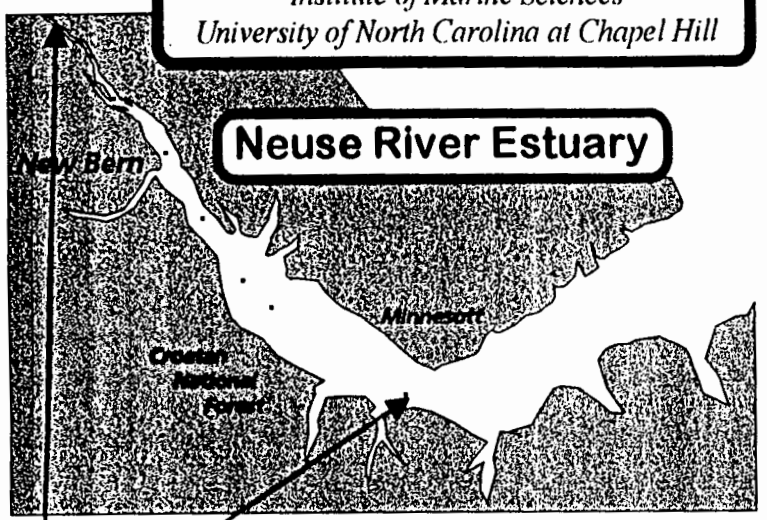
A salvage oper

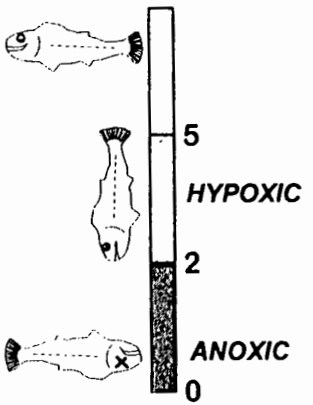

Neuse River Estuary **ModMon** Program
Legend
1994
1995
1996
1997
1998
Average
Cumulative Discharge (cubic meters x 10⁹)
0
0.5
1
1.5
2
2.5
3
3.5
4
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
1998
1996
1995
1997
1994


Neuse River Estuary **ModMon** Program
Cumulative DIN Loading (metric tons N x 10³)
Legend
1994
1995
1996
1997
1998
2
1.8
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
1998
1996
1995
1997
1994

Neuse River Bloom Project

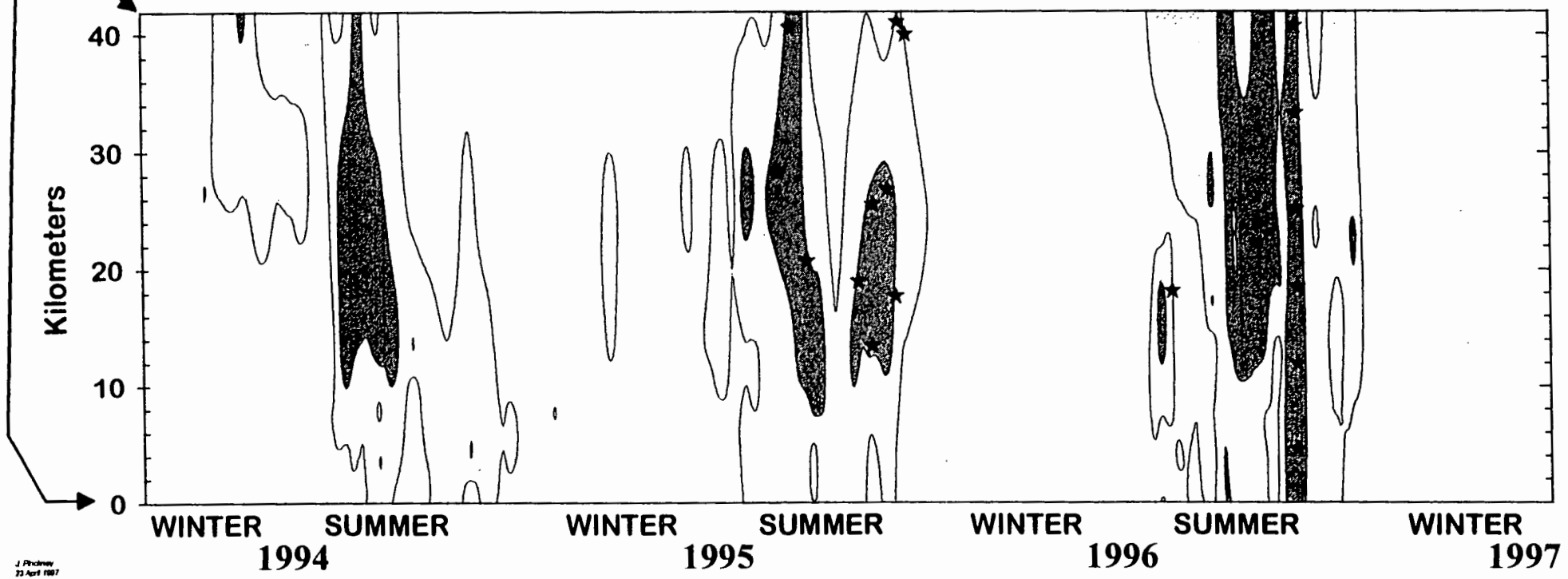
Institute of Marine Sciences
University of North Carolina at Chapel Hill



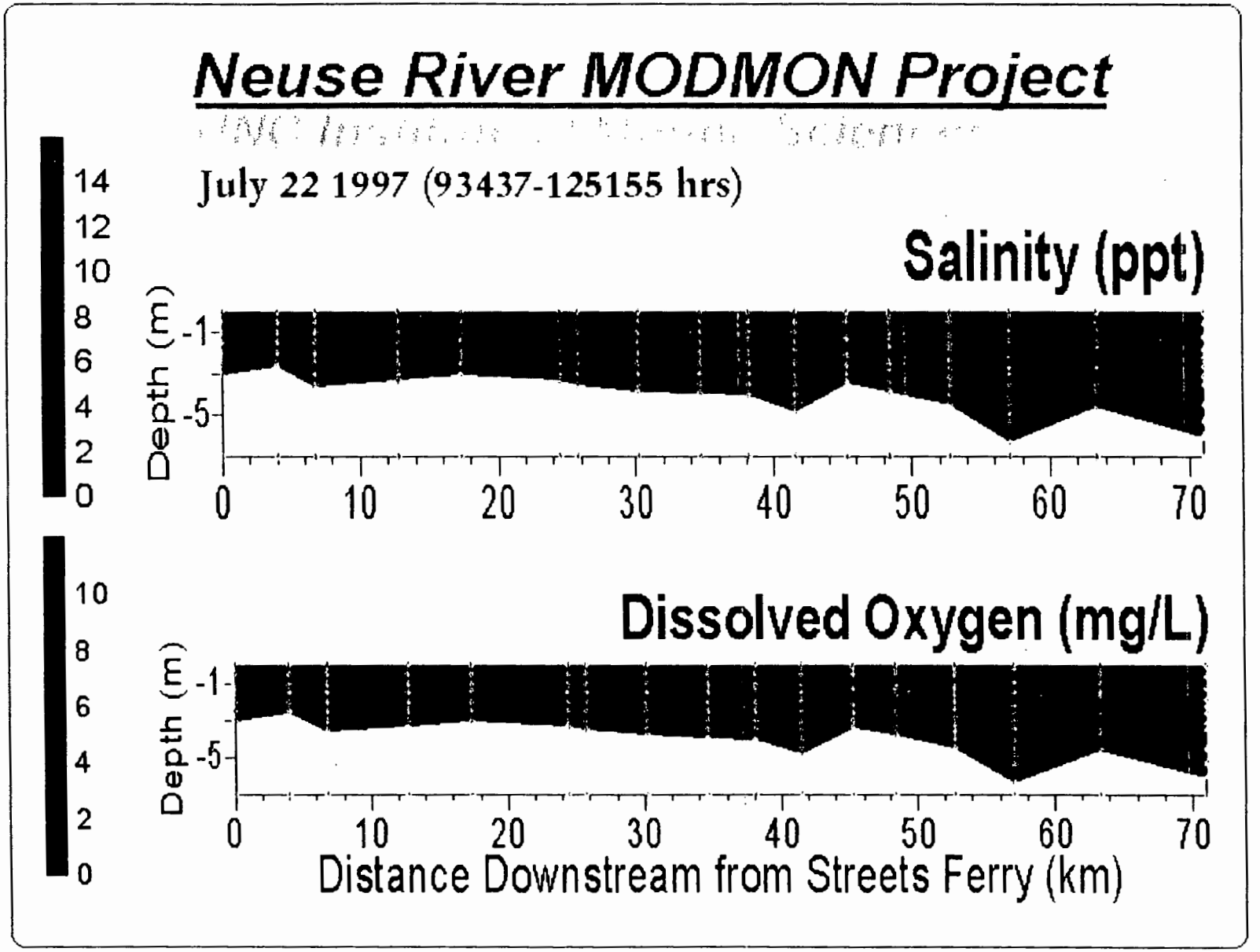


Dissolved Oxygen (mg/liter) in BOTTOM WATERS of the Neuse River Estuary

★ **Documented Fish Kill**
from NCDEHNR DWQ Database



J Pinckney
23 April 1997


Neuse River MODMON Project
July 22 1997 (93437-125155 hrs)
Salinity (ppt)
14
12
10
8
6
4
2
0
Depth (m)
-1
-5
0
10
20
30
40
50
60
70
Dissolved Oxygen (mg/L)
10
8
6
4
2
0
Depth (m)
-1
-5
0
10
20
30
40
50
60
70
Distance Downstream from Streets Ferry (km)

Oxygen Scenario

Organic matter from algal blooms settles to the bottom providing "fuel" for oxygen consumption.

Hot and calm weather in the summer/fall permits vertical stratification which limits oxygen exchange between bottom water and the air.

Large areas of oxygen depleted "dead water" form.

Appropriately oriented winds push dead water into shallow areas and creeks trapping fish.

Pfiesteria Scenario

Pfiesteria consume algae and therefore growth may be stimulated by algal blooms and direct nutrient uptake.

Pfiesteria are present in sufficient quantity to kill fish.

Fish are stressed by low oxygen conditions and are more susceptible to attacks from *Pfiesteria*.

NOTE: While a wide variety of fish have been shown susceptible to *Pfiesteria* in the laboratory, little is definitively know about the interplay between fish species and *Pfiesteria* in the wild (The Raleigh Report 1998).

Unknown Scenario

A high percentage of menhaden caught in bottom trawls by ModMon investigators at Duke Marine Lab in first 2 weeks of May have been covered with red sores.

Virtually no indication of this at any time last year.

Does not seem to be related to dissolved oxygen or *Pfiesteria*.

Knowns

Fish kills are natural events but they can be exacerbated by increased nutrient loading.

High discharge & nutrient loading provide food for algal blooms and set the stage for water quality problems including fish kills.

1998 has experienced extremely high discharge and loading and may already be showing signs of fish health problems.

Some Unknowns

How significant is the timing of nutrient loading?

Are stored nutrients in the sediments sufficient to cause algal blooms given reductions in external loading?

Is there enough organic matter in the sediments to create oxygen problems without future algal blooms?

What is the relative role of "mother nature" (discharge) vs "man" (nutrient concentrations) in water quality?

What is the importance of oxygen vs *Pfiesteria* vs unknown factors?

Needs

Modeling - to organize available knowledge in a rigorous framework to allow the best possible prediction of the results of management actions.

Long term monitoring - to separate natural (e.g., weather related) variability from management actions and to calibrate and verify a model.

Process based studies - to identify critical processes for modeling, identify model structure and provide model parameter inputs.

MODMON = MODeling + MONitoring

Develop a water quality model of the Neuse River Estuary

Implement and maintain a comprehensive monitoring program for the Neuse River Estuary

1997 MODMON Team

Duke University

Larry Crowder - fisheries

Ken Reckhow - probabilistic water quality modeling

Craig Stow - analysis of historical water quality data

East Carolina University

Bob Christian - network based water quality modeling

UNC Chapel Hill

Hans Paerl, Jay Pinckney - water quality, algal dynamics, nutrients

Rick Luettich, Jesse McNinch - circulation and physical properties

Pete Peterson - sediment ecology, fisheries

John Wells - sediment characteristics

Marc Alperin, Chris Martens, Dan Albert - sediment chemistry, sediment oxygen uptake

UNC Charlotte

Jim Bowen - process based water quality modeling

NOAA National Marine Fisheries

Hunter Lenihan - fisheries

US Geological Survey

Jerad Bales - continuous water quality monitoring

NC Division of Water Quality

Ruth Swanek, Juan Mangles - water quality modeling

Jay Sauber, Neuse River Rapid Response Team - sediment exchange, water quality monitoring

Weyerhaeuser Corporation

Martin Lebo - water quality monitoring

MODMON Status

Initial Effort:

Funded June 1997 - May 1998

Future Effort:

98/99 funding recommended by ERC and requested by Govenor

Inculde watershed and airshed

Many current results can be found on the Internet at:

http://www.marine.unc.edu/neuse/modmon

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — May 28, 1998
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry M Lancaster	DENR
Preston Howard	DWQ
Dan McLawhorn	DENR
Coleen Sullins	DWQ
Annette Lucas	DWQ
Greg Thorpe	DENR/DWQ
Kim Smith	NCLM
[illegible]	DWQ
Tom Benn	NC Wildlife Federation
Nat Mund	Conservation Council of NC
Michelle Cook	Weyerhaeuser

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Stevens	DWQ
Bob Slocum	NC FORESTRY ASSOCIATION
Russell Hageman	DENR, DAQ
Alan Klimek	DENR - DAQ
Ed Regan	N.C. Assoc of County Commissioners
Ben McLee	DENR - DWQ
Amy H. Fullbright	Hunton & Williams
Dennis Robinson	Chicago
Alice Garland	Electricities
Dianne Bradley	ENR - Forestry
Joe McClees	N.C. Septic Tank

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Preyer	NC Environmental Defense Fund
[signature]	CPdc
Joanne Schoen	N.C. nurses Assoc.
Doug Lassiter	NC Septic Tank Assoc
Laura Hartsell	MCIC
David Knight	Sierra Club

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 2, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 2, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bills were discussed and all distributed material as well as copies of the bills are attached:

SENATE BILL 1269 - WELL CONTRACTOR CERT. EXTENSION - Senator Kinnaird sponsored this bill. George Givens of staff was recognized to explain the bill which had been changed into a proposed committee substitute. Senator Odom moved that the proposed committee substitute be adopted for discussion purposes. Motion carried. After discussion of the PCS, Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 1274 - EXTEND SUBMERGED LANDS CLAIMS - Senator Albertson, sponsor, asked Senator Gulley, Vice Chairman, to chair the meeting so that Senator Albertson could explain his bills. After discussion, Senator McDaniel moved that the bill be given a favorable report. Motion carried.

SENATE BILL 1276 - EXTEND CORE SOUND MORATORIUM - Senator Gulley continued to chair the committee for Senator Albertson, sponsor, to explain the bill. After discussion, Senator Wellons moved that the bill be given a favorable report. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 2, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 1269 **WELL CONTRACTOR CERT. EXTENSION**
Senator Kinnaird

SB 1274 **EXTEND SUBMERGED LANDS CLAIMS**
Senator Albertson

SB 1276 **EXTEND CORE SOUND MORATORIUM**
Senator Albertson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, June 02, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1274** Extend Submerged Lands Claims
Sequential Referral: None
Recommended Referral: None

S.B. **1276** Extend Core Sound Moratorium
Sequential Referral: None
Recommended Referral: None

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

S.B. **1269** Extend Date for Well Contractor Cert.
Draft Number: PCS3613
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1269*
Proposed Committee Substitute S1269-PCS3613

Short Title: Extend Date for Well Contractor Cert. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND BY ONE YEAR THE DATE BY WHICH WELL CONTRACTORS MUST BE CERTIFIED UNDER THE NORTH CAROLINA WELL CONTRACTORS CERTIFICATION ACT AND TO EXTEND THE TIME FOR THE ADOPTION OF RULES BY THE WELL CONTRACTORS CERTIFICATION COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11 of S.L. 1997-358 reads as rewritten:

"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.~~ 2000. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January ~~1999.~~ 2000."

Section 2. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Well Contractors Certification Commission may adopt temporary rules to implement S.L. 1997-358 until 1 July 1999.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1269*

Short Title: Extend Date for Well Contractor Cert. (Public)

Sponsors: Senators Kinnaird; Jenkins, Odom, and Phillips.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND BY SIX MONTHS THE DATE BY WHICH WELL CONTRACTORS MUST BE CERTIFIED UNDER THE NORTH CAROLINA WELL CONTRACTORS CERTIFICATION ACT AND TO EXTEND THE TIME FOR THE ADOPTION OF RULES BY THE WELL CONTRACTORS CERTIFICATION COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

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Section 1. Section 11 of S.L. 1997-358 reads as rewritten:

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

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MEMORANDUM

June 2, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George Givens, Committee Counsel
Jeff Hudson, Committee Counsel
Rick Zechini, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1269 (Extend Date for Well Contractor Certification)

Senate Bill 1269 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. Its companion bill, House Bill 1431 (Extend Date for Well Contractor Certification), was introduced in the House of Representatives by Representative Arlie Culp.

Last year the General Assembly enacted the North Carolina Well Contractors Certification Act (Act). The certification and continuing education requirements of the Act were to take effect January 1, 1999. Due to delays in the appointment of members to the Well Contractors Certification Commission (Commission), the Department of Environment and Natural Resources (DENR) has requested that the Commission be granted more time to develop and adopt temporary rules to implement the Act. Senate Bill 1269, as introduced, delayed the effective dates of the certification and continuing education requirements to July 1, 1999. The proposed committee substitute extends the time during which the Commission may adopt temporary rules to implement the Act to January 1, 2000. The proposed committee substitute also delays the effective dates of the Act's certification and continuing education requirements to January 1, 2000. Finally, the proposed committee substitute delays the repeal of the current registration requirement until January 1, 2000 (the date that the new certification requirement is to become effective).

The only difference between the proposed committee substitute and Senate Bill 1269, as introduced, is that the proposed committee substitute delays the effective dates of the certification and continuing education requirements by one year rather than six months.

Section 1.

Section 1 of the proposed committee substitute delays the effective date of G.S. 87-98.4(a), thereby extending the date by which well contractors must be certified under the Act to January 1,

2000. This section also delays the effective date of G.S. 87-98.12 (continuing education requirements for well contractors) to January 1, 2000. In addition, this section delays the effective date of Section 6 of S.L. 1997-358, which repeals G.S. 143-355(e) (requirement that drillers register with DENR), to January 1, 2000.

Section 2.

Section 2 of the proposed committee substitute allows the Commission to adopt temporary rules to implement the Act until July 1, 1999.

Section 3.

Section 3 of the proposed committee substitute makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1274*

Short Title: Extend Submerged Lands Claims. (Public)

Sponsors: Senator Albertson.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the

superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

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

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

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

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

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

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

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

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Memorandum

June 2, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 1274 (Extend Submerged Lands Claims)

Senate Bill 1274 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. Senate Bill 1274 was also reviewed by the Joint Legislative Commission on Seafood and Aquaculture. The companion to Senate Bill 1274, House Bill 1490 (Extend Submerged Lands Claims), was introduced in the House of Representatives by Representative John Weatherly.

Senate Bill 1274 was requested by the Department of Environment and Natural Resources (DENR) in order to provide more time for DENR, in conjunction with the Attorney General's Office, to resolve outstanding submerged lands claims.

Section 1.

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

Section 2.

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

Section 3.

Section 3 of this bill makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1276*

Short Title: Extend Core Sound Moratorium. (Public)

Sponsors: Senators Albertson; and Perdue.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MORATORIUM ON ISSUING SHELLFISH CULTIVATION LEASES IN CORE SOUND, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

Section 1. 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; Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session; Section 12 of S.L. 1997-256; Section 8 of S.L. 1997-347; and Section 6.14 of S.L. 1997-400, 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 ~~1 July 1998.~~ July 1, 1999."

Section 2. This act becomes effective July 1, 1998.

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(919) 733-2578

Memorandum

June 2, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 1276 (Extend Core Sound Moratorium)

Senate Bill 1276 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Joint Legislative Commission on Seafood and Aquaculture. Its companion bill, House Bill 1410 (Extend Core Sound Moratorium), was introduced in the House of Representatives by Representative Jean Preston.

Core Sound is a water body located between mainland Carteret County and Core Banks. In this area of the State there is a great deal of conflict between individuals who lease areas underlying coastal fishing waters for shellfish cultivation and individuals who harvest shellfish from naturally occurring shellfish beds. Due to this conflict, a moratorium on issuing new shellfish cultivation leases was enacted for a portion of Core Sound during the 1996 Regular Session. This moratorium was extended by one year during the 1997 Regular Session and is scheduled to expire on July 1, 1998. The North Carolina Division of Marine Fisheries (Division) is currently conducting its shellfish mapping program to identify shellfish density and habitat in the Core Sound area. The Division will complete this mapping by the end of 1998. A human use mapping project designed to facilitate a better understanding of user conflicts is also underway in the Core Sound area and is also scheduled to be completed by the end of 1998. These studies should provide information relevant to resolving the user conflict in the Core Sound area.

Section 1.

Section 1 of this bill extends the moratorium on issuing new shellfish cultivation leases for a portion of Core Sound by one year to July 1, 1999.

Section 2.

Section 2 of this bill makes this act effective July 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — June 2, 1998
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A. B. Swindell	IP Staff
Phillip Forman	Sen. Basnight's Off.
Lu-Ann Coe	FFF
Jerry Hibbitt	NCPC
R. Rogers	ENR
John H. Cyrus	N.C. State Grange
B. Scarbro	NC Home Council
Doug Lassiter	NC Septic Tank Assoc
Bob Slocum	N.C Forestry Association
Julian Philpott	NC Farm Bureau
Mike Marshall	NC. Marine Fisheries

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P. A. WOTCZECHOWSKI	DMF
David Knight	NC Sierra Club
N. t Mad	CCNC
Allen Jernigan	Atty General's Office
Preston Pate	Marine Fisheries
Roger Bowe	Bowe + Assoc
Kelli Kulma	DuPont
R. Paul Wilms	NCHBA
DEVIVO	DENR
Amy Fullbright	Hunton & Williams

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 9, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 9, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were twelve committee members present.

The following bills were discussed and all distributed material as well as copies of the bills are attached:

SENATE BILL 1294 -EXTEND/EXPAND ENV. HEALTH STUDY - Senator Perdue, sponsor, could not be at the meeting so George Givens of Staff explained the bill. Senator Cochrane moved that the bill be given a favorable report. Motion carried.

SENATE BILL 1303 - CERTAIN SEPTIC TANK DEVICES REQUIRED - Senator Odom, sponsor. Senator Albertson announced that this bill would be removed from the agenda of today's meeting.

SENATE BILL 1313 - IMPROVE SEDIMENTATION CONTROL - Senator Kinnaird, sponsor, was in another committee meeting and had asked George Givens of Staff to explain the bill. Senator Horton moved that the bill be given a favorable report. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 9, 1998
11:00 a.m.
Room 1124 LB

AGENDA

SB 1294	EXTEND/EXPAND ENV. HEALTH STUDY Senator Perdue
SB 1303	CERTAIN SEPTIC TANK DEVICES REQUIRED Senator Odom
SB 1313	IMPROVE SEDIMENTATION CONTROL Senator Kinnaird

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, June 09, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1294** EXTEND/EXPAND ENV. HEALTH STUDY
Sequential Referral: None
Recommended Referral: None

S.B. **1313** IMPROVE SEDIMENTATION CONTROL
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1294*

Short Title: Extend/Expand Env. Health Study. (Public)

Sponsors: Senators Perdue; Albertson, Cochrane, Jenkins, Kinnaird, Martin of Pitt, and Odom.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE STUDY OF THE ORGANIZATIONAL STRUCTURE AND ADMINISTRATIVE PLACEMENT OF THE PROGRAMS IN THE DIVISION OF ENVIRONMENTAL HEALTH OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND TO EXPAND THE SCOPE OF THE STUDY TO INCLUDE THE ORGANIZATION, FUNCTIONS, POWERS, AND DUTIES OF THE VARIOUS BOARDS, COMMISSIONS, AND COUNCILS HAVING JURISDICTION OVER ENVIRONMENTAL, PUBLIC HEALTH, AND NATURAL RESOURCES PROGRAMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11A.127 of S.L. 1997-443 reads as rewritten:

"Section 11A.127. Pending ~~the results of~~ action by the General Assembly on the recommendations of the Environmental Review Commission resulting from the study to be undertaken by the Environmental Review Commission as provided in this Part, on-site wastewater functions, public drinking water programs, and environmental health programs shall remain in the Department of Environment and Natural Resources, the Division of Environmental Health, shall remain intact in the Department of Environment and Natural Resources, and the Department of Environment and Natural Resources shall not consolidate on-site wastewater functions or drinking water programs in the Division of Water Quality."

Section 2. Section 11A.128 of S.L. 1997-443 reads as rewritten:

"Section 11A.128. The Environmental Review Commission shall study the following issues and report its findings to the ~~1997 General Assembly, Regular Session 1998,~~ 1999 General Assembly, along with any legislation it proposes to address these issues:

(1) The appropriate roles and financing of local and state agencies in reviewing, permitting, inspecting, and monitoring private wells, community wells, municipal wells, and municipal surface water supplies;

(2) The appropriate roles and financing of local and State agencies in reviewing, permitting, inspecting, monitoring, and maintaining septic tanks, package wastewater treatment plants, municipal wastewater treatment plants, industrial treatment plants, and animal waste operations;

(3) The appropriate roles and financing of local and State agencies in administering the various environmental health programs;

(4) The integration of State's review of the financial integrity of applicants for drinking water and wastewater discharge permits;

(5) Policies to monitor the quality and prevent and reduce pollution of groundwaters;

(6) Consistent State policies for cleaning up contaminated groundwater and soils;

(7) Coordination of adoption and development of policies by the Coastal Resources Commission, Environmental Management Commission, Commission on Health Services, Marine Fisheries Commission, and other commissions having roles in water quality or wastewater issues;

(8) Policies to monitor the quality and prevent and reduce pollution of surface waters;

(9) Organization of the State's water planning agencies;

(10) Technical and financial assistance to business, industry, local governments, and citizens;

(11) Policies to encourage water conservation;

(12) Policies to encourage regional water supply and wastewater treatment planning; and

(13) The role of the North Carolina Cooperative Extension Services, North Carolina Department of Agriculture, and the North Carolina Department of Transportation in the protection of water supplies.

(14) The organization, functions, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs, including whether those functions, powers, and duties should be consolidated in a single commission."

Section 3. Section 11A.129 of S.L. 1997-443 reads as rewritten:

"Section 11A.129. The Secretary of Health and Human Services may reorganize the Department of Health and Human Services in accordance with G.S. 143B-10 and shall report as required by that section. In addition, the Department of Health and Human Services shall do the following:

(1) Report to the Joint Legislative Commission on Governmental Operations by December 31, 1997, on the Department's progress in incorporating health functions and agencies into the Department;

(2) Report to the General Assembly by ~~May 1, 1998,~~ 1 February 1999 on additional changes, including proposed legislation necessary to effectuate the purposes of this Part including the findings of the Environmental Review Commission's study.

(3) Report to the Joint Legislative Commission on Governmental Operations by ~~October 31, 1998,~~ 1 February 1999 on any proposed changes in the Department's structure of boards and commissions not already implemented as a result of the Environmental Review Commission's study or necessary to effectuate the purposes of this Part and to deliver services more efficiently;

(4) Report to the General Assembly by February 1, 1999, on the Department's progress in adopting any rule changes necessary to effectuate the purposes of this Part and any proposed legislation necessary to change the structure of any boards and commissions as reported to the Joint Legislative Commission on Governmental Operations."

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

North Carolina General Assembly
Legislative Services Office

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Memorandum

June 9, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel
George Givens, Committee Counsel

SUBJECT: Senate Bill 1294 (Extend/Expand Env. Health Study)

Senate Bill 1294 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission (ERC). The companion bill to Senate Bill 1294, House Bill 1433 (Extend/Expand Env. Health Study), was introduced in the House of Representatives by Representative Dewey Hill.

Chapter 443 of the 1997 Session Laws (1997 Budget Bill) transferred all health-related agencies, other than the Division of Environmental Health, from the Department of Environment, Health, and Natural Resources to the Department of Human Resources. It also renamed the two departments the Department of Environment and Natural Resources (DENR) and the Department of Health and Human Services (DHHS), respectively. Sections 11A.127 and 11A.128 of the 1997 Budget Bill specifically provided that the on-site wastewater, public drinking water, and environmental health programs would remain as separate programs within the Division of Environmental Health in DENR pending the results of an ERC study. This study included consideration of the appropriate roles and financing of local and State agencies regarding wastewater treatment, drinking water supplies, and environmental health programs. The ERC was to report its findings and legislative proposals to the 1998 Regular Session of the 1997 General Assembly.

During the course of this study, the interested parties realized that resolution of the issues involved also required consideration of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs. Based on this realization, a proposal to extend and expand the study was presented at the March 23, 1998 meeting of the ERC. This proposal was subsequently recommended by the ERC and introduced as Senate Bill 1294 and House Bill 1433. These bills extend the reporting dates for the study and expand it to include the issue of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 1.

Section 1 of this bill directs that, until the General Assembly acts on recommendations from the ERC study described in Section 2 of this bill, the on-site wastewater, public drinking water, and environmental health programs will remain as separate programs within the Division of Environmental Health in DENR.

Section 2.

Section 2 of this bill delays until the 1999 General Assembly the time by which the ERC must report on the appropriate roles and financing of local and State agencies regarding wastewater treatment, drinking water supplies, and environmental health programs. This section also adds a study of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs.

Section 3.

Section 3 of this bill delays until February 1, 1999, the date by which DHHS must report to:

- The ERC regarding additional changes necessary to effectuate the transfer of health-related agencies from DENR to DHHS
- The Joint Legislative Commission on Governmental Operations regarding any proposed changes in the structure of DHHS related boards and commissions

Section 4.

Section 4 of this bill makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1303*

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors: Senators Odom; Albertson, Cochrane, Horton, Kinnaird, Martin of Pitt, Perdue and Phillips.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE EACH NEW SEPTIC TANK SYSTEM TO USE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO DEVELOP STANDARDS FOR THESE DEVICES, TO ADOPT THESE REQUIREMENTS AND STANDARDS BY TEMPORARY RULES, AND TO CONSIDER WHETHER, FOR SYSTEMS THAT USE THESE NEW DEVICES, THE CURRENT REQUIREMENT THAT THE SITE MUST INCLUDE A SEPARATE REPAIR AREA CAN BE AMENDED, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an effluent filter to prevent solid and other materials from leaving the septic tank and the use of an access lid or other access device for each compartment of the tank to provide access to the compartment in order to facilitate

service maintenance. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. No later than October 1, 1998, the Commission for Health Services shall develop standards for the devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules for these standards and for the requirements under G.S. 130A-335(f), as amended by Section 1 of this act. These standards shall be designed to provide security against entry by persons other than those authorized for entry to service or inspect the system.

Section 3. The Commission for Health Services shall study the current rules that require the site of a septic tank system to have sufficient space for a repair area and shall consider whether the repair area of new or existing systems that use the access devices and effluent filters required for new systems under this act can be reduced in size or eliminated without unreasonably threatening the quality of groundwater or surface water. The Commission shall consider the experience of septic tank systems that use these new devices. No later than October 1, 2000, the Commission for Health Services shall report the results of this study and any recommendations to the Environmental Review Commission.

Section 4. This act is effective when it becomes law and applies to permits for new septic tank systems issued on or after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1313*

Short Title: Improve Sedimentation Control. (Public)

Sponsors: Senators Kinnaird; Albertson, Blust, Cochrane, Foxx, Horton, Jenkins, Lucas, Odom, Perdue, Phillips, Reeves, and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE SEDIMENTATION CONTROL COMMISSION AND THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-57(2) reads as rewritten:

"(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~30~~ 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion."

Section 2. G.S. 113A-65.1(d) reads as rewritten:

"(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed ~~three~~ five days."

Section 3. This act becomes effective 1 October 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1313*

Short Title: Improve Sedimentation Control. (Public)

Sponsors: Senators Kinnaird; Albertson, Blust, Cochrane, Foxx, Horton, Jenkins, Lucas, Odom, Perdue, Phillips, Reeves, and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE SEDIMENTATION CONTROL COMMISSION AND THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-57(2) reads as rewritten:

"(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~30~~ 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion."

Section 2. G.S. 113A-65.1(d) reads as rewritten:

"(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed ~~three~~ five days."

Section 3. This act becomes effective 1 October 1998.

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MEMORANDUM

June 9, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George Givens, Committee Counsel
Jeff Hudson, Committee Counsel
Rick Zechini, Committee Counsel

SUBJECT: Senate Bill 1313 (Improve Sedimentation Control)

Senate Bill 1313 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission (ERC). Its companion bill, House Bill 1415 (Improve Sedimentation Control), was introduced in the House of Representatives by Representative Dewey Hill.

The General Assembly passed the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief.

In response to increased concerns about erosion and sedimentation in the past year, the Governor requested that the Sedimentation Control Commission (Commission) develop a plan to improve erosion and sedimentation control. The Commission has developed a plan of action that includes expanded inspections, a request for additional funding for the program, and statutory and rule changes. The plan was presented to the ERC in March. This bill contains the statutory changes requested by the Commission and recommended by the ERC.

Section 1.

G.S. 113A-57(2) currently requires that exposed slopes resulting from land-disturbing activity subject to the Act be planted or otherwise provided with ground cover, devices, or other structures sufficient to restrain erosion within 30 working days of the completion of any phase of grading. Section 1 of this bill amends G.S. 113A-57(2) to require that these exposed slopes be planted, or otherwise provided for, within 15 working days or 30 calendar days of the completion of any phase of grading, whichever is shorter.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 2.

Section 2 of this bill amends G.S. 113A-65.1(d) to extend the period for which a stop-work order may be issued from a period not to exceed three (3) days to a period not to exceed five (5) days.

Section 3.

Section 3 of this bill makes this act effective October 1, 1998.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — June 9, 1998

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	N.C. Septic & N.C. Portable Group
Mary Hartsfield	NCPC
Doug Lassiter	NC Septic Tank Assoc.
Phil Zoeller	Sen. Zoeller's Off.
[illegible]	NCB
Kim Smith	NCLM
Emily Howell	Sen. Basnight's office
C. Parker	Bome & Assoc.
Bill Peter	DENR Div. of Envl. Health
Ken Cromartie	Wake County Dept. of Env.
Rick Rowe	WC DES

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nat Mund	Conservation Council of NC
Doug Howey	NCPMA
Mike Cement	NCCBA
B & Scarboro	NC Farm Council
Bill Stuart	City of Winston-Salem
John May	NC CWA
Beth Closson	DENR-DLR
James Simons	DENR
Tom Bean	NC Wildlife Federation
[illegible]	NCTBA
Laura Hartwell	MCLC
[illegible]	Bone Hosue

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — June 9-98

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R E McClain Jr.	Georgia-Pacific Corp
Bob Sloan	NC Forestry Assoc.
Lisa Martin	Upper Neuse River Basin Assn.
D. Rodman	Chicago
Alice Garland	Electricities
[signature]	Agri-Alliance of N.C.
John Cyrus	N.C. State Grange

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 16, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 16, 1998, at 11:00 a.m., in the 3rd Floor Auditorium of the Legislative Building. Senator Albertson, chairman, presided and there were nine committee members present. All Senators had been invited to this meeting as well as the House Agriculture Committee and the House Environment Committee.

The purpose of today's meeting was to hear a presentation by Rupert Fraser, Managing Director, Fibrowatt, Ltd., London, England, on how in the United Kingdom they are using poultry waste to fire power plants. Mr. Fraser said that in the United Kingdom clean electricity is essential. In addition to protecting the environment, there is virtually no odor. It was pointed out that this utilization of swine animal waste would not be practical as it is "too wet". Also attending with Mr. Fraser were Mark Thompson of Impax Capital in England and Sherry Tucker and Steve Katsurinis, both attorneys with McGuire, Woods, Battle and Boothe of Washington, DC. Mr. Fraser gave a very interesting presentation and generated many questions. Copies of his hand-outs are attached to these minutes.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 16, 1998
11:00 a.m.
Auditorium - 3rd Floor - Legislative Building

AGENDA

GUEST SPEAKER:

Rupert Fraser
Managing Director
Fibrowatt, Ltd.
London, England

fibrowatt

FIBROWATT

Presentation to

Senate Committee on Agriculture, Environment and Natural Resources

Senator Charles Albertson, Chairman

Tuesday June 16, 1998
Raleigh, North Carolina

fibrowatt

INTRODUCTION TO FIBROWATT

- Europe's leading biomass development company
- Designed & operates the world's only three poultry litter power plants
- Combusting 850,000 tons per year (50% of the UK's poultry litter)

fibrowatt

ANIMAL WASTE ISSUES

- **Most productive & competitive agricultural industry**
  - increased efficiency has led to increased concentration with production doubling in the last 20 years
  - Concentrated Animal Feeding Operations (CAFOs) produce 1.4 billion tons of manure per year
  - poultry industry is still growing at 6% per year
  - North Carolina produces more poultry than any European country
  - the problem will increase, even if there is action now
- **Non-point source water pollution**
- **The challenge: to find an alternative that is:**
  - sustainable
  - environmentally friendly
  - capable of disposing of large volumes

fibrowatt

INCREASED PUBLIC AWARENESS

Fibrowatt has met:

- **Poultry Growers and Integrators**
- **EPA** - Headquarters
  - Region III
- **US Senate** - EPA appropriations subcommittee
  - Agriculture Committee
- **Maryland State officials**
- **Tulsa City officials**
- **Power Companies**
- **Chesapeake Bay Foundation & NRDC**

POULTRY WORLDWIDE

- **Poultry rearing methods are the same worldwide, and therefore European pollution problems are similar:**
  - France: drinking water pollution, similar to Oklahoma/Arkansas
  - Italy: eutrophication/algae blooms, similar to North Carolina
  - Holland: groundwater pollution similar to Chesapeake Watershed
- **UK experience**
  - UK poultry production is 80% of North Carolina's production
  - UK has avoided water pollution problems, due to implementation of the Fibrowatt technology
- **Rest of Europe**
  - Fibrowatt is also working on projects to apply its technology in other European countries

fibrowatt

FIBROWATT

- **Founded by Simon Fraser in 1990**
- **Three Plants:**
  - **Eye**
    - World's first poultry litter fired power station
    - 12.7 MW, commissioned in July 1992
    - 6 years operating history
  - **Glanford**
    - World's second poultry litter fired power station
    - 13.5 MW, commissioned in November 1993
  - **Thetford**
    - fuel: 500,000 tons of poultry litter per year
    - commences operations Summer 1998
    - 38.5MW, Europe's largest renewable electricity generator

fibrowatt

THE FIBROWATT SOLUTION

- **Combustion of poultry litter**
  - dedicated facility
  - consists of wood shavings/straw/rice hulls and droppings
  - clean burning fuel (half the heating value of coal)
- **Power generation**
  - green electricity sales
  - heat/steam sales
- **High value fertilizer**
  - no waste products
  - rich in Potash/Phosphate and trace nutrients
  - Nitrogen free
- **Proven technology**

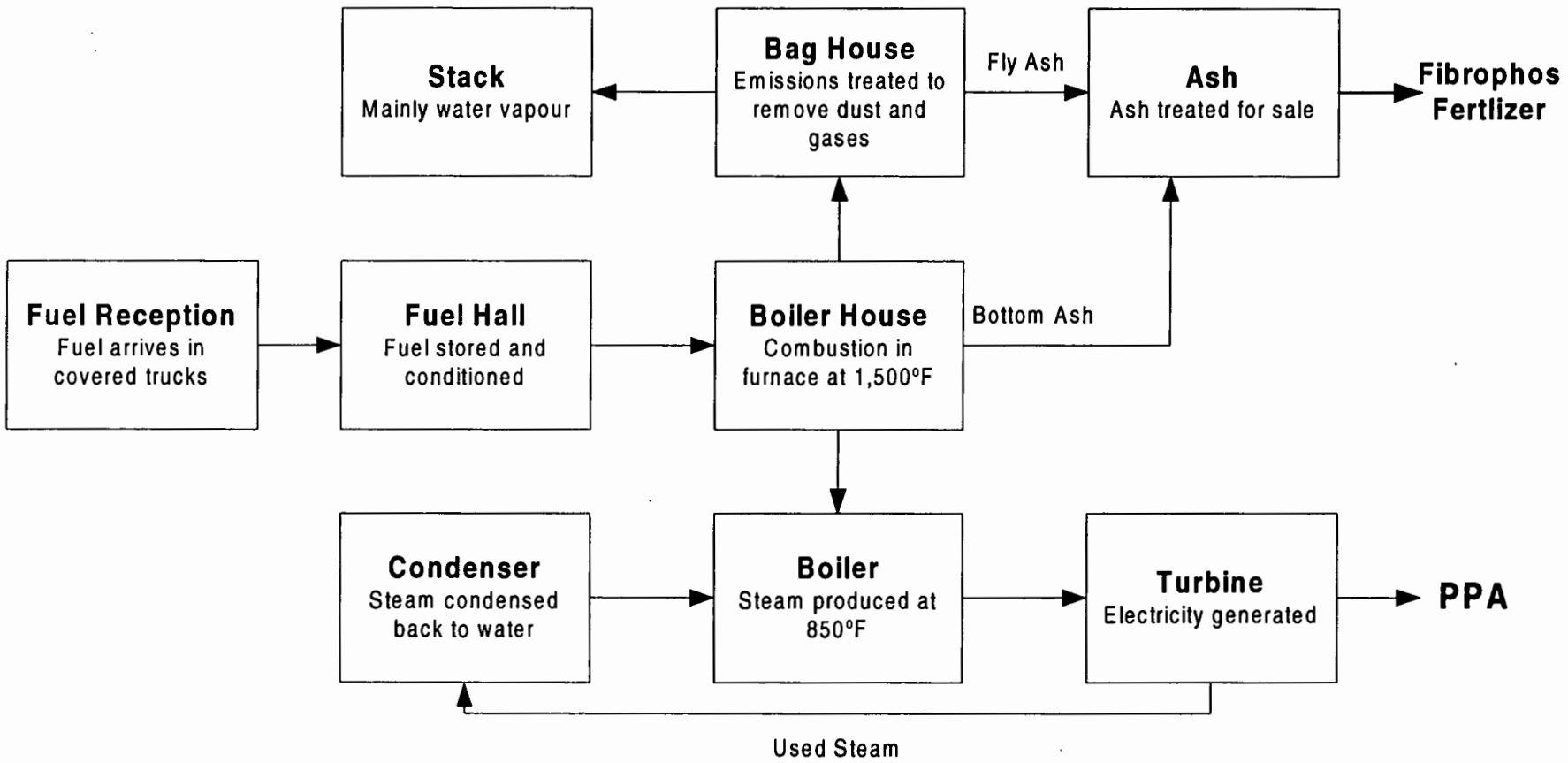
fibrowatt

HOW IT WORKS

- Coordinate poultry shed cleaning schedule with poultry farmers
- Delivery of poultry litter in covered trucks using set routes
- Trucks cleaned after depositing litter in fuel hall
- Fuel hall at negative pressure to prevent odor escape
- Combustion at 1,500^{0}F with 2 seconds residence time
- Steam production to drive electricity turbine

fibrowatt

HOW IT WORKS



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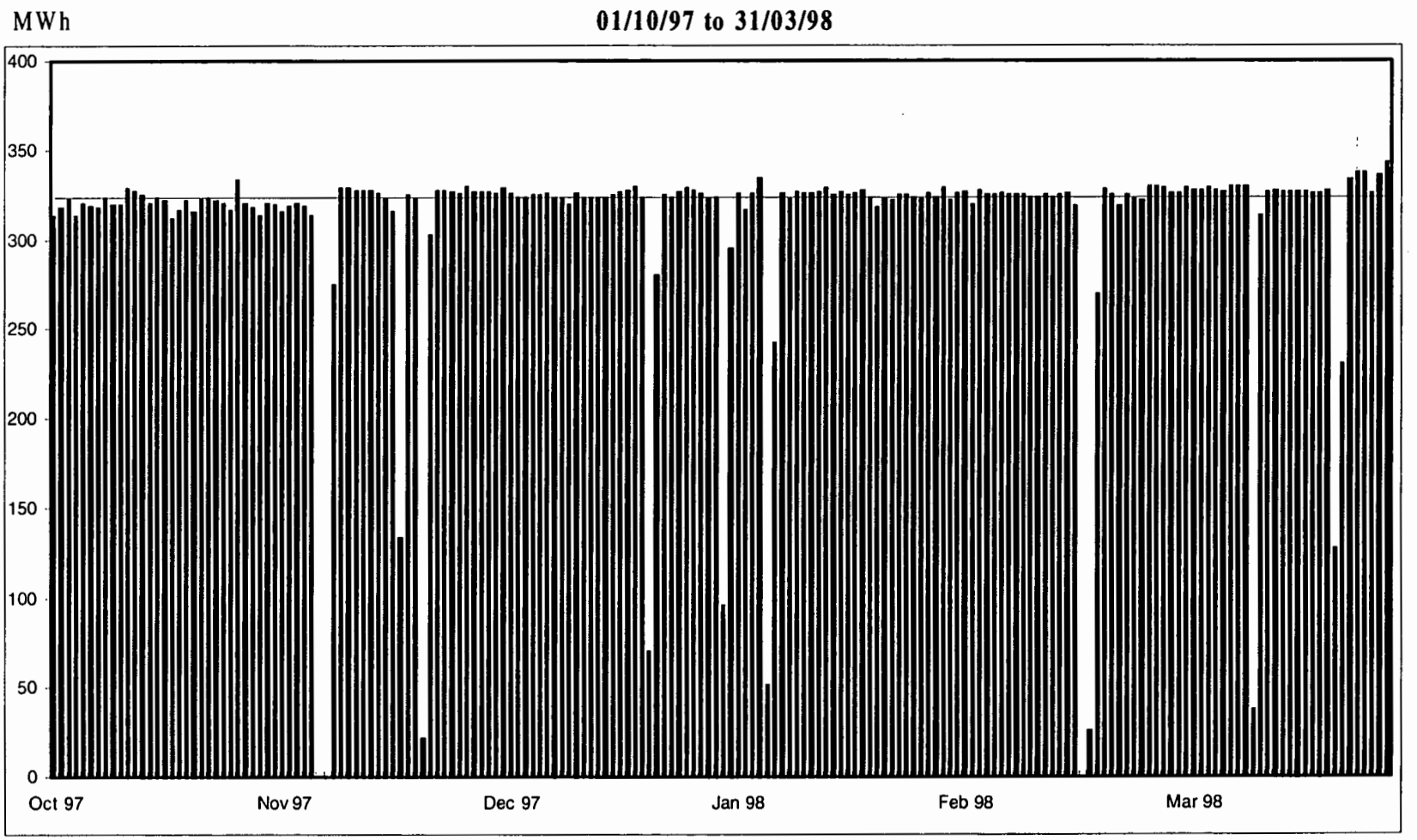
GLANFORD POWER STATION OUTPUT



Daily Output

PERCENTAGE OF DESIGN OUTPUT ACHIEVED FOR THE SIX MONTH PERIOD = 94.5%

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ENVIRONMENTAL BENEFITS

- **Pollution reduction**
  - water pollution from land disposal eliminated
  - air pollution from methane etc. reduced
- **Improved biosecurity**
  - better control of disease
- **Recycling of nutrients**
  - valuable fertilizer suitable for grasslands (Nitrogen free)
  - easy and efficient to transport
- **Generation of renewable electricity**
  - sustainable local fuel source
  - reduction of CO_2 emissions
  - displacement of fossil fuel power

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NEIGHBORHOOD

- **Local environment**
  - immediate reduction in local water pollution
  - reduction in local odor nuisance
  - reduction in traffic volume
  - minimal noise and visual impact
- **Local economy**
  - protection of poultry industry
  - new jobs (direct and indirect)
  - substantial investment into local economy
- **Neighbors**
  - good relationships with neighbors (liaison committees)
  - visits and regular public open days
  - local visitors to plants comment favorably

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COMMERCIAL BENEFITS

- **Promotes and preserves turkey and chicken farming in a sustainable manner**
- **Recovery and recycling of all the value in poultry litter:**
  - nutrients
  - energy
- **Local solution to local problem**
- **Industry led program**
- **Rapid implementation**

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THE COST

- **Cost depends on several factors:**
  - Local construction costs
  - Plant design
  - Local tax and financial incentives
  - Revenue from sale of power
  - Revenue from commercial fertilizer sales
- **Answers would be provided by a local feasibility study**
  - Duration: 4 months
  - Cost: about $250,000

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COST DYNAMICS

Costs	UK	Continental Europe	USA Estimate
Green Electricity	High	Medium-high	Low
Fuel Cost	Positive	Neutral-negative	Negative
Capital Grants	None	Medium	None
Interest Rates	High	Low-medium	Low
Capital Costs	High	Medium	Low

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LAND APPLICATION ALTERNATIVES

- **Trucking**
  - Dutch transported excess litter to East Germany - now unacceptable
- **Landfill**
  - Generally unpopular - some midnight dumping in Ireland
- **Pelletizing**
  - Small scale plants - inclusion in animal feed becoming controversial
- **Composting**
  - Italian experience has not been economically sustainable
- **Gasification etc**
  - Small scale units only
- **Fibrowatt's solution**

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COMPARISONS

Option	Environmentally Sustainable	Economically Sustainable	Technically Sustainable	Total
Trucking	1	2	5	8
Landfill	1	3	4	8
Pelletizing	3	3	3	9
Composting	3	2	4	9
Gasification	5	4	2	11
Fibrowatt solution	5	5	5	15

1 = poor
5 = excellent

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FUNDING THE SOLUTION

- **Economic sustainability**
- **Manure Banks**
  - a not for profit public-private partnership to address increased animal waste production
  - already used in Europe
- **Green Energy**
  - added value power generation for sustainable long-term disposal
  - widespread use in Europe
  - tax credits
  - green inside the fence

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SUMMARY

- Private industry solution to water pollution
- Proven ability to dispose of large volumes
- Fibrowatt's solution promotes economic sustainability for the poultry industry and the consumer
- The time for action is now

SENATE COMMITTEE ON AGRICULTURE, ENVIRONMENT AND NATURAL RESOURCES

STATEMENT OF RUPERT J. FRASER
MANAGING DIRECTOR OF FIBROWATT LTD

Mr. Chairman and Members of the Committee, thank you for inviting us to present the Fibrowatt technology to the Committee. This is an unexpected honor.

I am the Managing Director of Fibrowatt Limited, a company based in the U.K., which constructed and now operates the world's first three power plants which use poultry litter as fuel.
to generate electricity. While chicken and turkey manures are excellent fertilizers when applied to land that needs them, they contain high quantities of nutrients, which can, of course, cause water pollution problems. The Fibrowatt technology is a proven alternative to land disposal and provides a solution to a water pollution problem. Equally important, by providing a viable alternative, our process promotes sustainable development for turkey and chicken farmers. Hog farmers also

benefit, as poultry manure is removed from the land space is released for hog manure.

The Fibrowatt process unlocks and recycles the value in the poultry manure through combustion by concentrating all the nutrients and minerals in the ash, which is a nitrogen-free fertilizer sold on the commercial market to people who need these nutrients. This process makes us different from fossil fuel power plants which typically must dispose of their ash in a landfill. We sell the ash fertilizer with a guaranteed analysis under the name Fibrophos both domestically in England and export it to Africa and Taiwan. The fertilizer is easily transportable as the combustion process reduces the original volume and weight by 90 percent.

Fibrowatt was founded in 1990 by Simon Fraser, my father and now Chairman of the Board. Our first plant was built in 1992, quickly followed by our second in 1993. These two plants have used as fuel over 1.6 million tons of poultry litter. The electricity generation has been consistent, with a record that any fossil fuel power plant could be proud of. Fibrowatt's third and largest plant, Thetford, comes on line next month. This will be Europe's largest biomass power plant, using about

500,000 tons of poultry litter a year. When the Thetford plant begins operation, Fibrowatt's three plants will provide alternative and environmentally friendly disposal for up to 850,000 tons of chicken and turkey litter a year.

Our plants are located in the poultry-growing regions of Britain, usually within a radius of 50 miles from the poultry houses. We work closely with the farmers and accept poultry litter whenever the farmer needs to send it. Litter is transported in covered trucks from the poultry houses directly to the power plant. Trucks enter the enclosed plant and dump the litter in a negatively pressured fuel hall that prevent odors from escaping. You can stand outside our plants and not detect a bothersome odor. Fibrowatt's special handling procedures improve biosecurity and now are an integral part of any disease control program.

Furthermore, the combustion process itself is a clean one. Partly thanks to the chemical make-up of poultry litter, Fibrowatt's plants have a very good emissions record and can meet the toughest emissions standards currently in force throughout Europe.

With our third plant, Fibrowatt will provide alternative disposal for about 50% of the poultry litter produced in Britain each year. By employing this technology, Britain avoided the water pollution problems associated with intensive land application of poultry litter and has promoted sustainable development of Britain's poultry industry. Like Americans, the British are eating more poultry and the British poultry industry is growing. Our technology helps ensure that growth can continue.

This technology works in Britain. It works in Europe where we are building plants in the poultry growing regions of Italy and are expanding Holland, Belgium, France and Germany. The question is -- is it adaptable to poultry growing regions in the U.S.?

Certainly, the combustion process will work here. However, information needs to be developed to answer the questions of how much it costs to build and operate in the U.S. and will the poultry farmer have to pay a fee to deliver poultry litter to the plant. Without a site specific feasibility study which looks at construction costs, power sales and the

price of the fertilizer ash, we cannot give you a realistic answer. Based on our experience in Britain, we believe construction of a poultry litter-fired power plant could cost in the range of $40-55 million dollars, depending on the geographic region where the plant is located. Costs in Britain are greater because construction and labor costs are higher than in the U.S. and there is little experience in building biomass power plants. Adapting this technology to U.S. conditions will be cheaper, although a study is needed to verify this and to develop options for a plant that meets local needs.

Our plants have been built with private money raised through the international financial markets and secured by the sale of power from the plant and revenues from our commercial fertilizer. Plants in the U.S. could be financed in the same way. The price to the farmer, if any, will be determined by the extent the price for power sales can be maximized and a realistic price for the sales of the commercial fertilizer ash determined. In Britain the price of electricity has been subsidized by the Government through a "green power tax" and thus we get a higher

electricity price than is available in the U.S. In the U.S., however, we think that this factor could be tailored to the local poultry industry's power needs, and thus improve efficiency. With respect to prices for our nutrient- rich fertilizer, we have received estimates ranging from $105 to $220 per ton, depending on the poultry growing region of the U.S. To give a realistic answer on the market value of the fertilizer ash, research needs to be done on the nutrient value of the poultry litter of the region where the plant will be located and an analysis of the commercial fertilizer market.

In conclusion, we hope our technology can be of assistance to North Carolina in providing alternative disposal for excess poultry litter and to provide sustainable development for this prominent and productive industry -- all while preserving North Carolina's natural beauty.

Again, thank you for this opportunity and we would be pleased to answer any questions you may have concerning the Fibrowatt technology.

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 6/16/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NC Septic Tank Assoc
Lu-Ann Coe	FFF
Mary Butt	Sampson Co. Schools
John Cyrus	N.C. State Grange
David McLeod	NCDA&CS
Roger Bone	Bone & Assoc -
Jim McBride	Tyson Foods - Monroe, N.C.
Gene Upchurch	CP&L
John McAlister	Duke Energy
Don Eudy	NCDA
Gene Bradshaw	UNC-GA / NC State Univ Ag Rpms

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eberen Watson	Rep. Cindy Watson
Thomas Kenyon	NCSU
Eric van Heugten	NCSU
Jack Odle	NCSU
Deborah Johnson	Prestage Farms
Ted Ramelow	Ritter Farms
Mike Everett	NCHBA
George Everett	MCIC
Wayne Black	Perdue Farms Inc.
Michelle Cook	Weyerhaeuser
Bob Stevens	NC Poultry Association

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Adams	CCNC
Mike Williams	NCSU Animal & Poultry Waste Mgt.
Robert E. Lee	N.C. Env. Mgt. Comm.
Tom Carter	NCSU, Poultry Science Dept., Box 7608 Raleigh
Linda Harris	Townsends, P.O. Box 730 Pittsboro NC 27312
GLENN CARPENTER	NCSU, COOP EXT SERV BOX 279 PITTSBORO 27312
Preston Howard	DENR/DWQ
Laura DeVivo	DENR
Tim Crowley	NC Public Radio
Johnny Gray	OSBM
Shelle Altieri	OSBM

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JW Rud	NC OSBM

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

June 23, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, June 23, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were on the agenda and all distributed material as well as copies of the bills are attached:

HOUSE BILL 577 - FORESTER REGISTRATION - Representative Weatherly, sponsor, requested that this bill be withdrawn from the agenda of today's meeting.

SENATE BILL 1303 - CERTAIN SEPTIC TANK DEVICES REQUIRE - Senator Odom, sponsor, said there was a proposed committee substitute for this bill and moved that it be adopted for discussion purposes. Motion carried. He then explained the bill. George Givens of Staff answered questions from committee members. Doug Lassiter of the North Carolina Septic Tank Association explained how the proposed filter worked. Mike Carpenter, representing the North Carolina Home Builders Association, said that his group supported the bill. Senator Wellons moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried. **(NOTE: This bill was reported out of committee; however, it was later re-referred to committee for further work.)**

The Committee heard from Dr. Larry Tombaugh, Dean, North Carolina State University, College of Forest Resources Department, who gave a presentation on the budget needs of his department.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, June 23, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SPEAKER: Dr. Larry Tombaugh, Dean
NCSU College of Forest Resources Department

HB 577 **FORESTER REGISTRATION**
Representative Weatherly

SB 1303 **CERTAIN SEPTIC TANK DEVICES REQUIRE**
Senator Odom

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, June 23, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

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

S.B. 1303 Certain Septic Tank Devices Required

Draft Number:	PCSA869
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 577
Committee Substitute Favorable 7/9/97

Short Title: Forester Registration. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89B of the General Statutes reads as rewritten:

"Chapter 89B.

"Foresters.

"**§ 89B-1. General provisions.**

(a) No person ~~shall, in connection with his name or otherwise, assume,~~ shall use ~~or advertise any title or description tending to~~ the designation 'forester', 'registered forester', or any other descriptive terms that include the words 'forester' or 'registered forester' and that directly convey ~~convey, directly or indirectly, the impression~~ that ~~he~~ the person is a ~~registered~~ forester without first having been registered ~~as a registered forester as hereinafter provided.~~ under this Chapter.

(b) ~~It is the intention of this~~ This Chapter ~~to benefit and protect~~ benefits and protects the public by improving the standards ~~relative to~~ for the practice of professional forestry in North Carolina.

"**§ 89B-2. Definitions.**

As used in this Chapter:

(1) 'Board' ~~shall mean~~ means the State Board of Registration for Foresters, provided for by this Chapter.

(2) 'Forester' means a person who by reason of ~~his~~ special knowledge and training in natural sciences, mathematics, silviculture, forest

protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined.~~ forestry.

(3) ~~"Practicing"~~ 'Practice of forestry' means ~~giving~~ rendering professional forestry services, including but not limited to, consultation, investigation, evaluation, ~~education,~~ planning, or ~~responsible supervision of any~~ other forestry activities requiring knowledge, ~~and training in and experience of~~ training, and experience in forestry principles and techniques.

(4) 'Registered forester' means a person who has been registered pursuant to this Chapter.

(5) 'Consulting forester' means a ~~person~~ registered forester who:

~~a. Is registered by the State Board of Registration for Foresters;~~

~~b. Is a technically educated professional forester who is a graduate of a forestry curriculum of a college or university and who holds a bachelor's or higher degree in forestry; or has shown equivalent knowledge by passing the written examination administered by the State Board of Registration for Foresters as provided in this Chapter;~~

~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~

~~d.~~ a. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;

~~e.~~ b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and

~~f.~~ c. Has filed annually an affidavit with the ~~State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).

(6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"**§ 89B-3. State Board of Registration for Foresters; appointment of members; terms.**

(a) A State Board of Registration for Foresters is created to administer the provisions of this Chapter. The Board shall have five members as follows:

(1) Four duly practicing registered foresters, at least three of whom hold ~~at a minimum a bachelor's~~ a bachelors or higher degree from an accredited forestry school, and

(2) One public member.

Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

"§ 89B-4. Compensation and expenses of Board members.

Each member of the Board shall receive per diem and allowances as provided ~~with respect to occupational licensing boards~~ by G.S. 93B-5.

"§ 89B-5. Organization and meetings of the Board.

The Board shall meet ~~on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings~~ at least twice each year. In addition, special ~~Special~~ meetings may be held ~~at such time and place as~~ in accordance with the ~~bylaws~~ rules of the ~~Board may provide.~~ Board.

"§ 89B-6. Powers of the Board.

The Board may ~~make all reasonable and necessary~~ adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter.

"§ 89B-7. Receipts and disbursements.

The secretary of the Board shall receive and account for all moneys derived under ~~the provision of~~ this Chapter, and shall keep ~~such~~ these moneys in a separate fund ~~to be~~ known as the 'Registered Foresters' Fund.' Moneys in the ~~aforesaid fund~~ Fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in ~~such sum as the Board may determine, the premium of which shall be regarded as~~ an amount determined by the Board. The premium for the surety bond is a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of ~~such~~ these assistants shall be paid out of the Registered Foresters' Fund.

"§ 89B-8. Records and reports.

The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; the applicant's place of business; ~~his~~ the applicant's educational and other qualifications; whether or not examination was required; whether the application was rejected or registration was granted; the date of action by the Board; and other information ~~as may be~~ deemed necessary by the

Board. ~~Annually on~~ Each July 1 the Board shall submit to the Governor a report of its transactions of the preceding year.

"§ 89B-9. General requirements for registration.

(a) ~~Applicants~~ An applicant for registration shall be registered upon satisfactory ~~showing~~ proof to the Board that the ~~applicant:~~ applicant is of good moral character and meets one of the following requirements:

~~(1) Is of good moral character, and~~

~~(2) Has either:~~

(1)~~a.~~ ~~Graduated~~ Graduation with a ~~bachelor's~~ bachelors or higher degree in a forestry curriculum from a school or college of forestry approved by the ~~Board~~ Board, passage of a comprehensive written examination, and ~~has had~~ the completion of two or more years' experience in ~~forestry; or~~ forestry.

(2)~~b.~~ ~~Passed~~ Passage of a written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, passage of a comprehensive written examination, and ~~has a record~~ the completion of ~~five~~ six or more years of active practice in forestry work ~~of a character satisfactory to the Board; provided that five or more years shall be~~ immediately prior to the ~~application; or~~ application. The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.

(3)~~c.~~ ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.~~ Registration in good standing as a registered forester with the Board as of January 1, 1998.

(4) Practice of urban forestry for six years immediately prior to January 1, 1998, if the applicant meets all of the following conditions:

a. The applicant is a North Carolina resident at the time of filing the application.

b. The applicant practiced under the title 'urban forester' during the six-year period.

c. The applicant, prior to June 30, 1998, applies to the Board for registration and submits an affidavit under oath to the Board showing experience and education equivalent to that of a forester, as determined by the Board.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(b1) The Board may issue a forester-in-training certificate to an applicant who has completed the educational requirements under subdivision (a)(1) of this section.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A ~~person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially same registration for North Carolina foresters who are registered under this Chapter.

(e) A nonresident of North Carolina may use the term 'registered forester' or other titles otherwise prohibited by this Chapter in North Carolina without becoming registered under this Chapter ~~provided that he is~~ if registered in another state which will reciprocate with the provision of this Chapter.

"§ 89B-10. Application and registration fees.

(a) Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be ~~fifteen dollars ($15.00),~~ in an amount determined by the Board, not to exceed fifty dollars ($50.00), which shall accompany the application. An additional ~~twenty dollars ($20.00)~~ fee, not to exceed forty dollars ($40.00), shall be paid upon issuance of the certificate of registration. ~~Should the~~ An applicant ~~fail or refuse to~~ that does not remit the certificate fee within 30 days after being notified ~~in the usual manner that the applicant has successfully qualified, he~~ of qualification forfeits the right to have the certificate ~~so issued and said~~ issued, and the applicant may be required again to submit an original application ~~fee therefor.~~ fee. ~~Should~~ If the Board ~~deny the issuance of~~ denies a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board.

(b) It is unlawful for any person to provide false or forged information to the Board or a member of the Board in obtaining a certificate of registration.

"**§ 89B-11. Expiration and ~~renewals.~~ renewals; continuing education.**

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. ~~It shall be the duty of the~~ The secretary of the Board ~~to notify, at his last registered address,~~ shall notify every person registered under this ~~Chapter~~ Chapter, at the person's last registered address, of the date of the expiration of ~~his~~ registration and the amount of fee ~~which shall be~~ required for its renewal for one year. ~~Such~~ The notices shall be mailed at least 30 days ~~in advance of~~ prior to the expiration date of ~~such~~ the registrations. The annual renewal fee for certificates shall be ~~twenty dollars ($20.00).~~ in an amount established by the Board, not to exceed fifty dollars ($50.00). The fee for issuance of replacement certificates of registration shall be five dollars ($5.00).

Any registration which has expired may be renewed by paying ~~a fee of twenty dollars ($20.00)~~ the registration fee plus ~~one dollar ($1.00)~~ one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed ~~twenty dollars ($20.00).~~ an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 credit hours per year, as a condition of renewal.

"**§ 89B-12. Examinations.**

When written examinations are required, they shall be held at ~~such~~ the time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination ~~at the expiration of~~ after six months and will be reexamined with payment of an additional fee ~~of fifteen dollars ($15.00).~~ established by the Board, not to exceed fifty dollars ($50.00). Subsequent examinations will be granted upon payment of ~~a fee of fifteen dollars ($15.00)~~ this fee for each examination. The Board may limit an applicant to three examinations.

"**§ 89B-13. Revocations and reissuance of registration.**

The Board ~~shall have the power to~~ may revoke or suspend the certificate of registration of any registrant who ~~is found, by the Board, to be guilty of~~ it finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of ~~forestry,~~ forestry or ~~who is found by the Board to have~~ has demonstrated incompetence as a practicing forester. The Board ~~is empowered to~~ may designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct by a registrant in the practice of forestry. ~~in connection with any forestry practice against any registrant that may come to its attention.~~

Any person may prefer charges against ~~any~~ a registrant. ~~Such~~ The charges shall be in ~~writing and~~ writing, ~~shall be~~ sworn to by the person making ~~them and shall be~~ them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may

appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"**§ 89B-14. Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.**

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board~~ Board. ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

"**§ 89B-15. ~~Violation and penalties.~~ Violation.**

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1303*
Proposed Committee Substitute S1303-PCSA869-RT001

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT EACH NEW SEPTIC TANK SYSTEM INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND TO ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The specifications for the effluent filter and access device shall meet but not exceed the requirements of G.S. 130A-335.1. The Department and local health

departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State shall provide an effluent filter that meets the requirements of G.S. 130A-335(f), this section, and rules adopted by the Commission. The Commission shall require that a qualified expert who is independent of any manufacturer of effluent filters or septic tanks establish that the effluent filter meets the requirements of this section and rules adopted under this section. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. The effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Reduce the total suspended solids that enter the drainfield by a minimum of twenty-five percent (25%) of the total suspended solids that would enter the drainfield in the absence of the effluent filter.

(3) Be designed to allow for routine maintenance.

(4) Under normally anticipated use, not require maintenance more frequently than once in any three-year period.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to meet a minimum uniform load of 150 pounds per square foot without damage to the septic tank, riser, or cover.

(3) Prevent water entry.

(4) Come to within six inches of the final grade when the surface has been finally landscaped.

(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 November 1998. Temporary rules adopted under this section shall become effective on 1 December 1998. The effluent filters and access devices required by G.S. 130A-335(f), as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335(f) and this section shall apply to any new septic tank system for which a permit is issued on or after 1 December 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1303*

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors: Senators Odom; Albertson, Cochrane, Horton, Kinnaird, Martin of Pitt, Perdue and Phillips.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE EACH NEW SEPTIC TANK SYSTEM TO USE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO DEVELOP STANDARDS FOR THESE DEVICES, TO ADOPT THESE REQUIREMENTS AND STANDARDS BY TEMPORARY RULES, AND TO CONSIDER WHETHER, FOR SYSTEMS THAT USE THESE NEW DEVICES, THE CURRENT REQUIREMENT THAT THE SITE MUST INCLUDE A SEPARATE REPAIR AREA CAN BE AMENDED, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an effluent filter to prevent solid and other materials from leaving the septic tank and the use of an access lid or other access device for each compartment of the tank to provide access to the compartment in order to facilitate

service maintenance. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. No later than October 1, 1998, the Commission for Health Services shall develop standards for the devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules for these standards and for the requirements under G.S. 130A-335(f), as amended by Section 1 of this act. These standards shall be designed to provide security against entry by persons other than those authorized for entry to service or inspect the system.

Section 3. The Commission for Health Services shall study the current rules that require the site of a septic tank system to have sufficient space for a repair area and shall consider whether the repair area of new or existing systems that use the access devices and effluent filters required for new systems under this act can be reduced in size or eliminated without unreasonably threatening the quality of groundwater or surface water. The Commission shall consider the experience of septic tank systems that use these new devices. No later than October 1, 2000, the Commission for Health Services shall report the results of this study and any recommendations to the Environmental Review Commission.

Section 4. This act is effective when it becomes law and applies to permits for new septic tank systems issued on or after January 1, 1999.

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Memorandum

June 23, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1303 (Certain Septic Tank Devices Required)

Senate Bill 1303 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. The companion bill to Senate Bill 1303, House Bill 1462 (Certain Septic Tank Devices Required), was introduced in the House of Representatives by Representative Arlie Culp.

Section 15.16(c) of S.L. 1997-443 (The 1997 Budget Bill) directed the Environmental Review Commission (ERC) to study the development of best management practices for the installation of new septic tank systems and for the replacement or improvement of existing septic tank systems. To this end, the ERC heard presentations on best management practices for septic tank systems on November 24, 1997 and April 13, 1998. Based on these presentations, the ERC recommended a legislative proposal that requires certain devices for new septic tank systems. This legislative proposal was introduced in the Senate by Senator Odom as Senate Bill 1303 (Certain Septic Tank Devices Required).

Senate Bill 1303 as Introduced

Senate Bill 1303 directs the Commission for Health Services (Commission) to adopt rules that require each septic tank to employ an effluent filter to prevent solid and other materials from leaving the septic tank as well as an access device to facilitate service maintenance. This bill also directs the Commission to adopt standards for effluent filters and access devices no later than October 1, 1998. Finally, Senate Bill 1303 directs the Commission to consider whether the repair area for septic tank systems using these devices can be reduced in size or eliminated without unreasonably threatening groundwater or surface water quality and to report its conclusions to the ERC no later than October 1, 2000. Senate Bill 1303 is effective when it becomes law and applies to permits for new septic tank systems issued on or after January 1, 1999.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Proposed Committee Substitute for Senate Bill 1303

The primary changes made by the Proposed Committee Substitute for Senate Bill 1303 are the elimination of the study of the repair area for septic tank systems and the addition of specific requirements and standards for effluent filters and access devices. The Proposed Committee Substitute for Senate Bill 1303 specifically provides for the following:

Section 1 directs the Commission to adopt rules that require each septic tank to employ an effluent filter to reduce the total suspended solids entering the drainfield as well as an access device to facilitate service maintenance.

Section 2 establishes the requirements and standards for the effluent filters and access devices required by this act.

Section 2(a) requires that installation of an effluent filter be done in accordance with specifications provided by the manufacturer of the effluent filter. This section also directs the Commission to require that an independent, third-party expert establish that a particular effluent filter meets the requirements established by rules adopted under this section and that the effluent filter:

- Is made of noncorrosive materials
- Reduces the total suspended solids that enter a drain field by at least 25%
- Is designed to allow routine maintenance
- Requires maintenance only once every three years when used under normally anticipated conditions

Section 2(b) requires that an access device provide access to each compartment of a septic tank for inspection and maintenance and that it include an appropriate cover. This section also requires that an access device:

- Be large enough to facilitate inspection and service
- Be designed and constructed to meet at least a 150 pound per square foot load without damage to the septic tank, riser, or cover
- Prevent water entry
- Come within six inches of the final grade of the landscaped surface
- Be visibly marked for ready location

Section 3 directs the Commission to adopt temporary rules to implement standards for effluent filters and access devices no later than November 1, 1998. These temporary rules become effective on December 1, 1998. This section also provides that the effluent filters and access devices required by this act apply only to new septic tanks for which a permit is issued on or after December 1, 1998.

Section 4 makes this act effective when it becomes law.

North Carolina State University is a land-grant university and a constituent institution of The University of North Carolina

Department of Forestry

NC STATE UNIVERSITY

College of Forest Resources
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Raleigh, NC 27695-8008

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FOREST BIOTECHNOLOGY

EXPANSION BUDGET PROPOSAL TO THE NORTH CAROLINA GENERAL ASSEMBLY

UNC-System/NC State University
Agricultural Programs Expansion Budget
Agricultural Production and Life Science Industries

The Issue

Increasing world population and rising affluence in many developing countries have greatly increased demands for food and fiber. Forestry firms throughout the world have responded to these demands with increased investments in forest production and manufacturing capacity. In particular, countries in the southern hemisphere now have extensive programs of tree planting of exotic pines and hardwoods. Large differences in growth rates--2 to 10 times greater in the southern hemisphere than in the U.S. South--have caused the competitive position of the South to erode rapidly in the last decade.

We must substantially increase our commitment to and investment in the basic means of timber production--genetics, biotechnology, and intensive management--if we are to remain competitive. A focused response in forest biotechnology is a key to unlocking the potentials in the South of increased forest growth rates, timber quality, and forest health. North Carolina State University is beginning its second decade of its basic research in forest biotechnology. This program has already developed the first genetic maps of loblolly pine; identified selected properties that control wood structure; and identified genes that provide resistance to fusiform rust. We now need to capitalize on these path-breaking efforts and ensure that they can be continued and applied to increase forest productivity. To date, much of our research at NCSU has been funded with external grants. More state funding is needed to ensure continued research excellence and leadership by the forest biotechnology group in the face of large investments in other states and in other countries.

Enhanced forest biotechnology research, development, and application will increase wood fiber production in North Carolina and the South. This can help us retain our competitive position as the leading producer of pulp and paper and of solid wood products in the world; produce more wood fiber; improve international competitiveness; and reduce disturbance of natural forests. Local benefits include more employment and income derived from the practice of intensive forestry, and more manufacturing capacity in local communities.

Budget

Funds for the Forest Biotechnology Group are needed for faculty or technical positions and operating funds. This request will amount to $200,000 per year.

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SOUTHERN CENTER FOR SUSTAINABLE FORESTS

EXPANSION BUDGET PROPOSAL TO THE NORTH CAROLINA GENERAL ASSEMBLY

UNC-System/NC State University
Agricultural Programs Expansion Budget - Natural Resources and the Environment

The Center

North Carolina has more than 19 million acres of forests, or almost 62% of its total land area. Rapid development is projected throughout the South, and particularly noticeable in North Carolina. For the next decade, we are projected to have among the highest rates of increase in the U.S. in population, gross domestic product, urban development, road construction, and timber harvesting. A host of issues from water quality to wood chip production to mountain development threaten the productivity, sustainability, and health of North Carolina forests.

Sustainable forestry implies that we must consider both market and environmental impacts of forest practices and their long run consequences. Relevant research questions must examine many issues such as selection of forest practices, effects of timber harvests, plans for regeneration, protection of water quality, improvement of wildlife habitat, markets for nonindustrial private landowners, ecological restoration, and the urban/rural interface.

We have agreed to establish a Southern Center for Sustainable Forests as a cooperative effort between NC State University, the North Carolina DENR/Division of Forest Resources, and Duke University. The Center will provide leadership to promote economically and ecologically sustainable management of forests in the South. The Center will:

- Foster research and applications on the productivity, sustainability, and stewardship of forest practices on private forests and evaluate the effects of intensive forestry at the stand and landscape scale.
- Improve state, regional, and interdisciplinary cooperation in technology transfer of existing and new research efforts to forestry professionals and to private landowners.
- Ensure development and use of appropriate guidelines for sustainable forestry that incorporate economic and ecological principles.

Budget

Funds for the Southern Center for Sustainable Forests are needed for a Director, a Technical Specialist, and an operating budget. This request will amount to $300,000 per year.

North Carolina State University is a land-grant university and a constituent institution of The University of North Carolina

Parks, Recreation and Tourism Management
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NC STATE UNIVERSITY

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RURAL TOURISM DEVELOPMENT

EXPANSION BUDGET PROPOSAL TO THE NORTH CAROLINA GENERAL ASSEMBLY

UNC-System/NC State University
Agricultural Programs Expansion Budget – Community and Rural Development

North Carolina's travel and tourism industry employs over 170 thousand workers and contributes over $10 billion annually to the State's economy, including $700 million in state and local taxes. North Carolina's 15 urban counties account for 61% of the economic impact from tourism while its 85 rural counties contribute only 39%.* The impact of rural communities is limited due to the lack of professional staff in tourism planning and development. Rural communities also lack data for tourism planning and have inadequate opportunities for training in tourism and hospitality management for their workforce.

Rural communities have natural and cultural resources that can serve as attractions for tourism development, but generally lack expertise in the utilization of those resources to maximize the economic benefits from tourism. That expertise would be provided to North Carolina's rural communities by the NC Center for Rural Tourism Development.

Services to be provided by the Center include:

- Identify potential tourism attractions, activities, facilities, services and financial investments needed to maximize economic benefits to communities.
- Identify "barriers" that limit tourism development in rural communities.
- Identify tourist development alternatives with projected economic and social impacts.
- Identify strategies to develop and sustain tourism development with emphasis on the responsible use and management of natural and cultural resources.
- Determine the economic impact from tourism to rural communities.
- Provide information and training to local leaders and professionals in successful rural tourism development through the NC Cooperative Extension Service.

Proposed Budget:

NC State University contribution	$65,000
New State Appropriation	$240,000

*NCSU Office of Park and Tourism Research, 1997

Dean Larry W. Tombaugh

Education:

Ph.D., Resource Economics, University of Michigan, 1968
M.S., Forestry, Colorado State University, 1963
B.S., Forestry, Pennsylvania State University, 1960

Career Highlights:

Dean, College of Forest Resources, NCSU, 1989-present.
Chairman and Professor, Department of Forestry, Michigan State University, East Lansing, MI, 1978-1989.
Deputy Assistant Director for Planning and Analysis, National Science Foundation, Washington, D.C., 1976-1978.
Director, Division of Advanced Environmental Research and Technology, National Science Foundation, Washington, D.C., 1975-1976; Program Manager, 1971-1975.
Principal Economist, Southeastern Forest Experiment Station, U.S. Forest Service, 1969-1971.

Awards and Activities:

President, National Association of Professional Forestry Schools and Colleges, 1990-1991.
Elected Member, Forest Science and Technology Board, Society of American Foresters, 1987-1990.
Elected Member, International Council, International Union of Forestry Research Organizations, 1986.
Appointee, State Forest Industry Development Council, appointed by Governor, confirmed by Michigan Senate, 1984-1986.
National Science Foundation Meritorious Service Award (Silver Medal), 1976.
Colorado State University Alumni Association Professional Achievement Award, 1974.
Fellow, Society of American Foresters.
Fellow, American Association for the Advancement of Science.

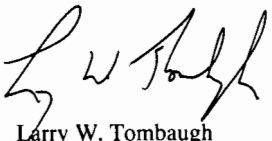
Our business is basically the natural resources of the state and the nation, since it is impossible to look at forests without looking at wildlife, water resources, soil and air. The challenge facing the College of Forest Resources in the next decade is to produce the people and new ideas that will be able to provide natural resources for a growing economy without degrading the quality of the natural environment.

Three major functions served by our forested resources define our vision for the future: commodities, leisure opportunities and the environment. Public policy, the area where these three interact and conflict, may be the most interesting of all in the years ahead. In this regard, part of our vision is a fully functioning Natural Resources Research Center to bring together the scientific and technical talents of N.C. State University and elsewhere to tackle major issues that are facing the state. Our number one job is to educate the leaders of tomorrow in each of these areas. What we try to concentrate on is the two components of leadership—competence and confidence—and we are going to do even more to instill that sense of confidence in the next decade. Equally important to us is education through extension. We have the leading forestry extension program in the nation, which is helping to make sure that citizens understand forests and natural resources and contribute to preserving them.

Undergirding our education efforts is our research program. The College is second in the University in the research dollars brought in by faculty, demonstrating the aggressiveness of our faculty and the high regard in which they are held. Maintaining a strong research program will not only help to create new knowledge but also will support our graduate program, which will grow significantly in the future.

We are also going to instill an international sense in the hearts and minds of our student body. Our leaders and our citizens must understand the global village in which we live, in addition to the fact that forestry involves international issues. This means more than offering a course here and there—we must infuse the international element into all our courses.

In this regard, we are working to establish a Center for World Environment and Sustainable Development. A cooperative effort of the NCSU Colleges of Forest Resources and Agriculture and Life Sciences with Duke University and the University of North Carolina at Chapel Hill, the Center will enable us to attract major funding from international donors and work together to improve our world.



Larry W. Tombaugh
Dean

NORTH CAROLINA STATE UNIVERSITY

College of Forest Resources

NORTH CAROLINA IS A FORESTED STATE

- **62% of Land Area is Forested**

- **Forested Area about size of New Hampshire, Vermont, Connecticut, and Massachusetts combined**

NORTH CAROLINA FORESTS ARE OWNED BY --

- **67%** owned by farmers and other **private individuals**
- Collectively, decisions of these **400,000 people** are determining economic and environmental future of much of North Carolina
- Only 13% is owned by forest industry

NORTH CAROLINA FORESTS PROVIDE --

ENVIRONMENTAL VALUES

- Clean Water
- Clean Air
- Wetlands
- Wildlife Habitat
- Home for Endangered Species
- Biological Diversity

NORTH CAROLINA FORESTS PROVIDE --

TOURISM AND RECREATION

- Travel and Tourism is more than a $10 billion industry in North Carolina
- 48% of tourism visits to NC are based on attraction of natural resources
- Great Smoky Mountain National Park is most heavily visited National Park

NORTH CAROLINA FORESTS PROVIDE --

PRODUCTS, JOBS AND ECONOMIC OPPORTUNITIES

- Are **2,600** wood products manufacturing firms in NC
- Forest products industry -- lumber, plywood, paper, and furniture -- ranks **second** in manufacturing employment
- **Second** in annual payroll

IN SHORT

NORTH CAROLINA FORESTS PROVIDE --

- Opportunities for hundreds of thousands of North Carolinians to make a good living

AND

- An environment that makes that good living truly worth living

WHAT IS THE PROBLEM?

- Population is EXPLODING
- Tourism is DOUBLING EVERY 7 YEARS
- Forest industry is GROWING AND SHIFTING TO SOUTH
- Public is DEMANDING environmental values associated with forests

THESE FACTORS ARE PUTTING ENORMOUS PRESSURES ON FORESTS AND FOREST RELATED INDUSTRY

WE HAVE A LITTLE TIME

- For first time in over 80 years, forests in much of South is being harvested at faster rate than is growing
- Without action, this is not sustainable
- In North Carolina, our growth rates still exceed our harvest rates
- Our forests are in better shape than in almost any other southern state

BY ACTING NOW, WE CAN

- Improve water quality
- Quadruple forest productivity
- Expand forest products industry
- Increase natural-resource based tourism
- Reduce natural resource conflicts
- Protect the environment

NC STATE CAN HELP

- Grow more wood on less land
- Increase income opportunities for 400,000 forest landowners and farmers
- Develop environmentally friendly wood products manufacturing processes
- Assist communities with sustainable tourism development
- Foster informed public discussion
- Produce natural resource and industry leaders

COLLEGE OF FOREST RESOURCES IS ORGANIZED TO DEAL WITH CRITICAL NATURAL RESOURCE ISSUES

- Department of Forestry
- Department of Parks, Recreation and Tourism Development
- Department of Wood and Paper Science

EACH HAS A CRITICAL ROLE IN LEADING US TO SUSTAINABILITY

CRITICAL NEEDS IN 1998 AGRICULTURAL PROGRAMS EXPANSION BUDGET REQUEST

- **Forest Biotechnology $200,000/year**

- **Southern Center for**
- **Sustainable Forestry $300,000/year**

- **Rural Tourism Initiative $240,000/year**

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 6/23/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Diana Jernigan	Agri-Alliance of N.C. -
Phillip C. Foreman	Sen. Basnight's Offc.
Jim Hardaway	NCPC
Lucy-Ann Coe	FFF
Vernon James	NCS Grange
[illegible]	N.C. Sierra [illegible]
[illegible]	[illegible]
Mike Carouto	NCCBEP
Bob Slocum	NC Forestry Association
George Everett	MCIC

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 6/23/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Stevens	DWQ
R. Rogers	DENR
J. Carlyle Tharpe	Co-op Council
Katie Adams	CCNC
Meghan Moore	Sierra Club
Stephen Whitfield	NC Society of Consulting Foresters
Fred E. Whitfield	consulting Foresters
Leo M Killian	Mayo - Van Allen
Roger Bone	Bone + Assoc - TT Pork Rinds
Phil Rea	NC State Univ.
Bill Flournoy	DENR

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 7, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 7, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

Senator Albertson introduced Hannah Holm, a new member of the Committee's environmental staff.

The following bills were on the agenda and all distributed material as well as copies of the bills are attached:

HOUSE BILL 577 - FORESTER REGISTRATION - Representative Weatherly, sponsor, was recognized to explain the bill. There was a proposed committee substitute and Senator Odom moved that we adopt it for discussion purposes. Motion carried. Barbara Riley of staff answered questions from committee members. Senator Odom said he could not support the bill as presently written because of the word "forester". Staff was to compile a list for the committee of the classifications with the word "certified" or "registered" in front of them. Senator Albertson said committee would take up the bill at a future meeting after staff had been able to research all the questions asked by members. Senator Horton suggested that a subcommittee be appointed to study the bill. After further discussion, Senator Albertson appointed the following subcommittee: Senator Wellons, chairman; Senator Horton; and Senator Phillips. Speaking in favor of the bill were Bob Slocum of the North Carolina Forestry Association; Samuel Hughes, Forestry Consultant; and H. C. Blanchard, Forester of Columbus County.

HOUSE BILL 1410 - EXTEND CORE SOUND MORATORIUM - Representative Preston, sponsor, explained the bill. Senator Odom moved that we adopt a proposed committee substitute for discussion purposes. Motion carried. After discussion, Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

SENATE BILL 1373 - DISAPPROVE TAR-PAMLICO BASIN RULE - Senator Bob Martin, sponsor, requested that this bill be removed from the agenda.

SENATE BILL 1565 - POULTRY/RATITE DEALERS REGISTRATION - Time did not allow discussion of this bill.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 7, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

HB 577	FORESTER REGISTRATION Representative Weatherly
HB 1410	EXTEND CORE SOUND MORATORIUM Representative Preston
SB 1373	DISAPPROVE TAR-PAMLICO BASIN RULE Senator R. Martin
SB 1565	POULTRY/RATITE DEALERS REGISTRATION Senator Albertson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, July 07, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

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

H.B. **1410** EXTEND CORE SOUND MORATORIUM

Draft Number:	PCS6459
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

HANNAH HOLM

It gives me great pleasure to introduce the newest member of our staff, Hannah Holm. Hannah is a native of Washington State and got her BA from Maclester College in St. Paul, Minnesota, and her two Masters degrees from the University of Texas in Austin—one in Community and Regional Planning, and one in Latin American Studies. She has been a research intern with research centers in both Brazil and Mexico. She has worked for almost 2 years as a program associate with an independent research center in Minneapolis, dealing with the environmental implications of globalization. Hannah will be working with the Research Division's Environmental Team. Please join me in giving her a warm welcome.

This PCS did not pass as written - to be revised.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 577
Committee Substitute Favorable 7/9/97
Proposed Senate Committee Substitute H577-PCSA493-RF

Short Title: Forester Registration. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89B of the General Statutes reads as rewritten:

"Chapter 89B.

"Foresters.

"**§ 89B-1. General provisions.**

(a) No person ~~shall, in connection with his name or otherwise, assume,~~ shall use ~~or advertise any title or description tending to~~ the designation 'forester', 'registered forester', or any other descriptive terms that include the words 'forester' or 'registered forester' and that directly convey ~~convey, directly or indirectly, the impression~~ that ~~he~~ the person is a ~~registered~~ forester without first having been registered ~~as a registered forester as hereinafter provided.~~ under this Chapter.

(b) ~~It is the intention of this~~ This Chapter ~~to benefit and protect~~ benefits and protects the public by improving the standards ~~relative to~~ for the practice of professional forestry in North Carolina.

"**§ 89B-2. Definitions.**

As used in this Chapter:

(1) 'Board' ~~shall mean~~ means the State Board of Registration for Foresters, provided for by this Chapter.

(2) 'Forester' means a person who by reason of ~~his~~ special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined.~~ forestry.

(3) ~~"Practicing"~~ 'Practice of forestry' means ~~giving~~ rendering professional forestry services, including but not limited to, consultation, investigation, evaluation, ~~education,~~ planning, or ~~responsible supervision of any~~ other forestry activities requiring knowledge, ~~and training in and experience of~~ training, and experience in forestry principles and techniques.

(4) 'Registered forester' means a person who has been registered pursuant to this Chapter.

(5) 'Consulting forester' means a ~~person~~ registered forester who:

~~a. Is registered by the State Board of Registration for Foresters;~~

~~b. Is a technically educated professional forester who is a graduate of a forestry curriculum of a college or university and who holds a bachelor's or higher degree in forestry; or has shown equivalent knowledge by passing the written examination administered by the State Board of Registration for Foresters as provided in this Chapter;~~

~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~

~~d.~~ a. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;

~~e.~~ b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and

~~f.~~ c. Has filed annually an affidavit with the ~~State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).

(6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"§ 89B-3. State Board of Registration for Foresters; appointment of members; terms.

(a) A State Board of Registration for Foresters is created to administer the provisions of this Chapter. The Board shall have five members as follows:

(1) Four duly practicing registered foresters, at least three of whom hold ~~at a minimum a bachelor's~~ a bachelors or higher degree from an accredited forestry school, and

(2) One public member.

Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

"§ 89B-4. Compensation and expenses of Board members.

Each member of the Board shall receive per diem and allowances as provided ~~with respect to occupational licensing boards~~ by G.S. 93B-5.

"§ 89B-5. Organization and meetings of the Board.

The Board shall meet ~~on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings~~ at least twice each year. In addition, special ~~Special~~ meetings may be held ~~at such time and place as~~ in accordance with the ~~bylaws~~ rules of the ~~Board may provide.~~ Board.

"§ 89B-6. Powers of the Board.

The Board may ~~make all reasonable and necessary~~ adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter.

"§ 89B-7. Receipts and disbursements.

The secretary of the Board shall receive and account for all moneys derived under ~~the provision of~~ this Chapter, and shall keep ~~such~~ these moneys in a separate fund ~~to be~~ known as the 'Registered Foresters' Fund.' Moneys in the ~~aforesaid fund~~ Fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in ~~such sum as the Board may determine, the premium of which shall be regarded as~~ an amount determined by the Board. The premium for the surety bond is a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of ~~such~~ these assistants shall be paid out of the Registered Foresters' Fund.

"§ 89B-8. Records and reports.

The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; the applicant's place of business; ~~his~~ the applicant's educational and other qualifications; whether or not examination was required; whether the application was rejected or registration was granted; the date of

action by the Board; and other information ~~as may be~~ deemed necessary by the Board. ~~Annually on~~ Each July 1 the Board shall submit to the Governor a report of its transactions of the preceding year.

"**§ 89B-9. General requirements for registration.**

(a) ~~Applicants~~ An applicant for registration shall be registered upon satisfactory ~~showing~~ proof to the Board that the ~~applicant:~~ applicant is of good moral character and meets one of the following requirements:

~~(1) Is of good moral character, and~~

~~(2) Has either:~~

(1)~~a.~~ ~~Graduated~~ Graduation with a ~~bachelor's~~ bachelors or higher degree in a forestry curriculum from a school or college of forestry approved by the ~~Board~~ Board, passage of a comprehensive written examination, and ~~has had~~ the completion of two or more years' experience in ~~forestry; or~~ forestry.

(2)~~b.~~ ~~Passed~~ Passage of a comprehensive written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the ~~Board,~~ Board and ~~has a record~~ the completion of ~~five~~ six or more years of active practice in forestry work ~~of a character satisfactory to the Board; provided that five or more years shall be~~ immediately prior to the ~~application; or~~ application. The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.

(3)~~c.~~ ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.~~ Registration in good standing as a registered forester with the Board as of January 1, 1998.

(4) Practice of urban forestry for six years immediately prior to January 1, 1998, if the applicant meets all of the following conditions:

a. The applicant is a North Carolina resident at the time of filing the application.

b. The applicant practiced under the title 'urban forester' during the six-year period.

c. The applicant, prior to June 30, 1998, applies to the Board for registration and submits an affidavit under oath to the Board showing experience and education equivalent to that of a forester, as determined by the Board.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(b1) The Board may issue a forester-in-training certificate to an applicant who has completed the educational requirements under subdivision (a)(1) of this section.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A ~~person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially same registration for North Carolina foresters who are registered under this Chapter.

(e) A nonresident of North Carolina may use the term 'registered forester' or other titles otherwise prohibited by this Chapter in North Carolina without becoming registered under this Chapter ~~provided that he is~~ if registered in another state which will reciprocate with the provision of this Chapter.

"§ 89B-10. Application and registration fees.

(a) Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be ~~fifteen dollars ($15.00),~~ in an amount determined by the Board, not to exceed fifty dollars ($50.00), which shall accompany the application. An additional ~~twenty dollars ($20.00)~~ fee, not to exceed forty dollars ($40.00), shall be paid upon issuance of the certificate of registration. ~~Should the~~ An applicant ~~fail or refuse to~~ that does not remit the certificate fee within 30 days after being notified ~~in the usual manner that the applicant has successfully qualified, he~~ of qualification forfeits the right to have the certificate ~~so issued and said~~ issued, and the applicant may be required again to submit an original application ~~fee therefor.~~ fee. ~~Should~~ If the

Board ~~deny the issuance of~~ denies a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board.

(b) It is unlawful for any person to provide false or forged information to the Board or a member of the Board in obtaining a certificate of registration.

"**§ 89B-11. Expiration and ~~renewals.~~ renewals; continuing education.**

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. ~~It shall be the duty of the~~ The secretary of the Board ~~to notify, at his last registered address,~~ shall notify every person registered under this ~~Chapter~~ Chapter, at the person's last registered address, of the date of the expiration of ~~his~~ registration and the amount of fee ~~which shall be~~ required for its renewal for one year. ~~Such~~ The notices shall be mailed at least 30 days ~~in advance of~~ prior to the expiration date of ~~such~~ the registrations. The annual renewal fee for certificates shall be ~~twenty dollars ($20.00).~~ in an amount established by the Board, not to exceed fifty dollars ($50.00). The fee for issuance of replacement certificates of registration shall be five dollars ($5.00).

Any registration which has expired may be renewed by paying ~~a fee of twenty dollars ($20.00)~~ the registration fee plus ~~one dollar ($1.00)~~ one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed ~~twenty dollars ($20.00).~~ an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 credit hours per year, as a condition of renewal.

"**§ 89B-12. Examinations.**

When written examinations are required, they shall be held at ~~such~~ the time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination ~~at the expiration of~~ after six months and will be reexamined with payment of an additional fee ~~of fifteen dollars ($15.00).~~ established by the Board, not to exceed fifty dollars ($50.00). Subsequent examinations will be granted upon payment of ~~a fee of fifteen dollars ($15.00)~~ this fee for each examination. The Board may limit an applicant to three examinations.

"**§ 89B-13. Revocations and reissuance of registration.**

The Board ~~shall have the power to~~ may revoke or suspend the certificate of registration of any registrant who ~~is found, by the Board, to be guilty of~~ it finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of ~~forestry,~~ forestry or ~~who is found by the Board to have~~ has demonstrated incompetence as a practicing forester. The Board ~~is empowered to~~ may designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct by a registrant in the practice of forestry. ~~in connection with any forestry practice against any registrant that may come to its attention.~~

Any person may prefer charges against ~~any~~ a registrant. ~~Such~~ The charges shall be in ~~writing and~~ writing, ~~shall be~~ sworn to by the person making ~~them and shall be~~

them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"**§ 89B-14. Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.**

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board~~ Board. ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

"**§ 89B-15. ~~Violation and penalties.~~ Violation.**

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 577
Committee Substitute Favorable 7/9/97

Short Title: Forester Registration. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

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protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined.~~ forestry.

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~~a. Is registered by the State Board of Registration for Foresters;~~

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~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~

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~~e.~~ b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and

~~f.~~ c. Has filed annually an affidavit with the ~~State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).

(6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"§ 89B-3. State Board of Registration for Foresters; appointment of members; terms.

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Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

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The Board shall meet ~~on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings~~ at least twice each year. In addition, special ~~Special~~ meetings may be held ~~at such time and place as~~ in accordance with the ~~bylaws~~ rules of the ~~Board may provide.~~ Board.

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(2)~~b.~~ ~~Passed~~ Passage of a written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, passage of a comprehensive written examination, and ~~has a record~~ the completion of ~~five~~ six or more years of active practice in forestry work ~~of a character satisfactory to the Board; provided that five or more years shall be~~ immediately prior to the ~~application; or~~ application. The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.

(3)~~c.~~ ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.~~ Registration in good standing as a registered forester with the Board as of January 1, 1998.

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(d) A ~~person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially same registration for North Carolina foresters who are registered under this Chapter.

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appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"**§ 89B-14. Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.**

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board~~ Board. ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

"**§ 89B-15. ~~Violation and penalties.~~ Violation.**

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1998.

North Carolina General Assembly
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July 7, 1998

MEMORANDUM

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Staff Attorney

RE: House Bill 577; Forester Registration

House Bill 577, introduced by Representative Weatherly, amends Chapter 89B of the General Statutes to mandate that all persons using the title "Forester" or Registered Forester" be registered by the State Board of Registration for Foresters. Curremt law provides only for voluntary registration and makes it unlawful for any person who is not registered to use the title "registered forester". The bill also raises the standards for forester registration and makes a number of other changes to Chapter 89B. These changes include:

(1) Addition of a requirement that an applicant for registration, except for a forester who has been registered in good standing as of January 1, 1998, or who is an "urban forester" (newly defined as a person engaging in forestry practice in an urban setting), must pass a comprehensive written exam as well as meet the other requirements to become a forester. Currently, an applicant must (i) have either a bachelors or higher degree in a forestry curriculum and two years of experience or (ii) pass an exam that shows knowledge approximating that obtained through graduation from a four-year forestry curriculum and five years of experience.

(2) An increase in the number of years of forestry experience from five to six years for an applicant without a bachelors or higher degree in forestry. As part of this change, the bill also provides that an Associate Applied Science degree in a curriculum approved by the State Board of Registration of Foresters is the equivalent of one year of experience, completion of the junior year of an approved forestry curriculum is the equivalent of two years of experience, and that completion of the senior year is the equivalent of three years of experience.

(3) Provision for the registration of an applicant who: (i) has practiced "urban forestry" for six years immediately prior to January 1, 1998, (ii) is a North Carolina resident, (iii) applies to the Board before June 30, 1998, for registration and submits a sworn affidavit showing experience and education equivalent to that of a forester.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(4) Allowing the Board to issue a forester-in-training certificate to an applicant who has graduated with a bachelors or higher degree in forestry but has not yet passed the test or gained the two years experience.

(5) Allowing the State Board of Registration for Foresters to set fees, subject to statutory maximums. Current application, registration, and renewal fees are set at $15, $20, and $20 respectively. Allowable fees are as follows:

- Application fee – not to exceed $50
- Registration fee – not to exceed $40
- Annual renewal fee – not to exceed $50
- Renewal fee for expired registration – the registration fee plus one-twelfth of the annual renewal fee per month from the date of expiration

Reexamination fee of $50

The bill is silent as to a fee for the first time an applicant takes the examination

(6) Allowing the Board to limit an applicant to three attempts to take and pass the examination

(7) Addition of a continuing education requirement that must not exceed 12 hours per year.

(8) Requiring each consulting forester to file annually with the Board affidavits of compliance with the requirements of Chapter 89B. A consulting forester is allowed to practice forestry management, appraisal, development, marketing, protection, and utilization for the benefit of the public on a fee, contractual, or contingency basis.

(9) Establishing a violation of the Chapter as a Class 3 misdemeanor (1-10 days community penalty, fine of up to $200, if no prior record).

The act becomes effective January 1, 1999.

H577-SMRF-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1410*
Proposed Senate Committee Substitute H1410-PCS6459-SB002

Short Title: Extend Core Sound Moratorium. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MORATORIUM ON ISSUING SHELLFISH CULTIVATION LEASES IN CORE SOUND, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

Section 1. 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; Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session; Section 12 of S.L. 1997-256; Section 8 of S.L. 1997-347; Section 6.14 of S.L. 1997-400; and Section 15 of S.L. 1998-23, 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 ~~when~~

~~the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes law.~~ July 1, 1999."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1410*

Short Title: Extend Core Sound Moratorium. (Public)

Sponsors: Representatives Preston; Smith, Hurley, and Mitchell.

Referred to: Environment.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MORATORIUM ON ISSUING SHELLFISH CULTIVATION LEASES IN CORE SOUND, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

Section 1. 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; Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session; Section 12 of S.L. 1997-256; Section 8 of S.L. 1997-347; and Section 6.14 of S.L. 1997-400, 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 ~~1 July 1998.~~ July 1, 1999."

Section 2. This act becomes effective July 1, 1998.

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Memorandum

July 7, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for House Bill 1410 (Extend Core Sound Moratorium)

House Bill 1410 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Joint Legislative Commission on Seafood and Aquaculture. Its companion bill, Senate Bill 1276 (Extend Core Sound Moratorium), was introduced in the Senate by Senator Charles Albertson and received a favorable report from this committee on June 2, 1998.

Core Sound is a water body located between mainland Carteret County and Core Banks. In this area of the State there is a great deal of conflict between individuals who lease areas underlying coastal fishing waters for shellfish cultivation and individuals who harvest shellfish from naturally occurring shellfish beds. Due to this conflict, a moratorium on issuing new shellfish cultivation leases was enacted for a portion of Core Sound during the 1996 Regular Session. This moratorium was extended by one year during the 1997 Regular Session to expire July 1, 1998. The North Carolina Division of Marine Fisheries (Division) is currently conducting its shellfish mapping program to identify shellfish density and habitat in the Core Sound area. The Division will complete this mapping by the end of 1998. A human use mapping project designed to facilitate a better understanding of user conflicts is also underway in the Core Sound area and is also scheduled to be completed by the end of 1998. These studies should provide information relevant to resolving the user conflict in the Core Sound area.

Section 15 of S.L. 1998-23 (Senate Bill 620 - Continuing Budget Authority) extends the Core Sound moratorium until the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes law in order to provide additional time for consideration of the July 1, 1999 moratorium extension proposed by House Bill 1410. The Proposed Committee Substitute for House Bill 1410 makes the technical changes necessary to reflect this extension.

Proposed Committee Substitute for House Bill 1410 (Extend Core Sound Moratorium)

Section 1 extends the moratorium on issuing new shellfish cultivation leases for a portion of Core Sound to July 1, 1999.

Section 2 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1373

Short Title: Disapprove Tar-Pamlico Basin Rule. (Public)

Sponsors: Senators Martin of Pitt and Albertson.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING THE TAR-PAMLICO RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B .0316, (Tar-Pamlico River Basin), as amended by the Environmental Management Commission, and approved by the Rules Review Commission on January 15, 1998, is disapproved.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1565

Short Title: Poultry/Ratite Dealers Registration. (Public)

Sponsors: Senators Albertson; and Carpenter.

Referred to: Agriculture/Environment/Natural Resources.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF DEALERS IN POULTRY AND RATITES, TO PROHIBIT SPECIALTY MARKET OPERATORS FROM PERMITTING UNREGISTERED POULTRY OR RATITE DEALERS FROM OPERATING AT SPECIALTY MARKETS, AND TO APPROPRIATE FUNDS FOR THE ENFORCEMENT OF THESE REGISTRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-540(3) reads as rewritten:

"(3) Regulate hatching egg dealers, chick dealers, poult dealers, poultry dealers, ratite dealers, and jobbers."

Section 2. G.S. 106-541 reads as rewritten:

"**§ 106-541. Definitions.**

For the purpose of this ~~Article, a hatchery shall be defined as~~ Article, the following definitions apply:

(1) 'Hatchery' means any establishment that operates hatchery equipment for the production of baby chicks or poults.

(2) ~~A hatching~~ 'Hatching egg dealer, chick ~~dealer or jobber shall mean~~ dealer, or jobber' means any person, ~~firm~~ firm, or corporation that buys hatching eggs, baby ~~chicks~~ chicks, or turkey poults and sells or offers them for sale.

(3) 'Live poultry or ratite dealer' means a person who sells or offers for sale to the general public live poultry or ratites. Live poultry or ratite dealer does not include persons who sell on their own

premises live poultry or ratites that were raised on the same premises.

(4) ~~The term "mixed~~ 'Mixed chicks' or 'assorted chicks' ~~shall mean~~ means chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed.

(5) 'Poultry' means live chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, or turkeys other than chicks or poults.

(6) 'Ratite' has the same meaning as in G.S. 106-549.15."

Section 3. G.S. 106-542 is amended by adding the following new subsections:

"(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first registering with the Department of Agriculture and Consumer Services.

(b2) It shall be unlawful for a specialty market operator, as defined in G.S. 66-250, to knowingly and willfully permit an unregistered poultry or ratite dealer to operate on the premises of the specialty market, as defined in G.S. 66-250, more than 10 days after being notified in writing by the Department of Agriculture and Consumer Services that the dealer is not registered."

Section 4. G.S. 106-547 reads as rewritten:

"**§ 106-547. Records to be kept.**

Every hatchery, hatching egg dealer, chick ~~dealer~~ dealer, poultry dealer, ratite dealer, or jobber shall keep such records of operation as the regulations of the Department of Agriculture and Consumer Services may require for the proper inspection of said hatchery, ~~dealer~~ dealer, or jobber."

Section 5. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year for the enforcement of registration requirements for poultry and ratite dealers.

Section 6. Section 5 of this act becomes effective July 1, 1998. Sections 3 and 4 of this act become effective October 1, 1999. The remaining sections of this act are effective when they become law.

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June 29, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **Senate Bill 1565: Poultry/Ratite Dealers Registration.**

Senate Bill 1565 would require all dealers of live poultry and ratites, other than those who sell birds on their own premises that were raised on their own premises, to register with the North Carolina Department of Agriculture and Consumer Services. The current poultry laws only require hatching egg dealers and chick dealers to obtain a license from the Department.

In addition to the registration requirement, the bill provides that specialty market operators may not knowingly allow an unregistered poultry or ratite dealer to operate on the premises more than 10 days after the operator has received notice from the Department of the dealer's unregistered status. A specialty market operator is one who leases space to another at a location other than a permanent retail store, for the purpose of selling goods at retail (ie. a flea market operator). G.S. 66-250. Live poultry and ratite dealers are further required to keep records as required by the Department.

Persons who fail to comply with the act are guilty of a Class 2 misdemeanor and are subject to civil penalties of up to $5,000. G.S. 106-549 and G.S. 106-549.01.

The sum of $10,000 is appropriated from the General Fund to the Department for the enforcement of the registration requirements.

The definitions sections of the act, Sections 1 and 2, are effective when the bill becomes law. The appropriation becomes effective July 1, 1998. The registration and records requirements become effective October 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. July 7, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc
Tommy Stevens	DWQ
Nat Mund	Conservation Council of NC
Dan Knight	NC Sierra Club
R. Rogers	DENR.
A.B. Swindell	BFT
Lisa Martin	Upper Neuse River Basin Assn.
DB	NCFB
Steve Woodson	NC Farm Bureau Federation
KELLI KUKURA	DuPONT
R. Paul Wilms	NCHBA

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPMHL
Dianne Beasley	ENR - Forestry
Stephen Whitfield	NC Society of Consulting Foresters
Bob Sloan	NC Forestry Association
Samuel O Hughes	Forestry Consultant
Fred E. Whitfield	Forestry consultant
Kim Smith	NCLM
Katie Adams	CCNC
Jerry Hardesty	NCPC.
H C Blanchard	Society of American Foresters
Molly Diggins	NC Sierra Club

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Philip Fourmy	Sen. Basnight's Off.
Crissy Parker	Bone & Associates
John Cyrus	N.C. State Grange
Jim Burton	UNC-GA / NC State Ag Programs
Walter Dunn	NCDA+CS
Joanna Quinn	NCDA+CS
David McLeod	NCDA+CS
Amy Fullbright	Hunton & Williams
Ed Regan	N.C. Assoc. of Co. Comm.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 14, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 14, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were on the agenda and all distributed material as well as copies of the bills are attached:

SENATE BILL 1314 - AGENCY RECEIPTS FOR RECYCLING - Senator Kinnaird, sponsor, was recognized to explain the bill. There was a proposed committee substitute and Senator McDaniel moved that the PCS be adopted for discussion purposes. Motion carried. Scott Mouw, Division of Pollution Prevention & Environmental Assistance of the Department of Environment, Health and Natural Resources, spoke in favor of the bill. Senator McDaniel moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

SENATE BILL 1373 - DISAPPROVE TAR-PAMLICO BASIN RULE - Senator Bob Martin, sponsor, explained and said there was a PCS. Senator Wellons moved that the PCS be adopted for discussion purposes. Motion carried. After discussion, Senator Wellons moved that the PCS be given a favorable report, unfavorable as to bill. Motion carried.

SENATE BILL 1565 - POULTRY/RATITE DEALERS REGISTRATION - Senator Albertson, sponsor. At this point, Senator Wellons began chairing committee so that Senator Albertson could explain his bill. Barbara Riley of staff answered questions from committee. Also answering questions was Dr. John Atwell, State Veterinarian of the Department of Agriculture. Senator McDaniel moved that the bill be given a favorable report. Motion passed and the bill was sequentially referred to Appropriations

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
COMMITTEE

Tuesday, July 14, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 1314	AGENCY RECEIPTS FOR RECYLING Senator Kinnaird
SB 1373	DISAPPROVE TAR-PAMLICO BASIN RULE Senator R. Martin
SB 1565	POULTRY/RATITE DEALERS REGISTRATION Senator Albertson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, July 14, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1565** POULTRY/RATITE DEALERS REGISTRATION
Sequential Referral: APPROPRIATIONS
Recommended Referral: NONE

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

S.B. **1373** DISAPPROVE TAR-PAMLICO BASIN RULE
Draft Number: PCSA884
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: NO

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Wednesday, July 15, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

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

S.B. **1314** AGENCY RECEIPTS FOR RECYCLING

Draft Number:	PCS6858
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 1314*
Proposed Committee Substitute S1314-PCS6858-RT/SB003

Short Title: Agency Receipts for Recycling. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE AGENCIES TO RETAIN RECEIPTS FROM THE SALE OF RECYCLABLE MATERIALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.02 reads as rewritten:

"**§ 143-64.02. Definitions.**

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

(3) 'Recyclable material' means a recyclable material, as defined in G.S. 130A-290, that the Secretary of Administration determines, consistent with G.S. 130A-309.14, to be a recyclable material."

Section 2. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05. ~~Warehousing, transfer, etc., charges.~~ Service charges for disposal of surplus property and recyclables; use of receipts from sale of surplus property and recyclable material.**

(a) The State agency for surplus property may assess and collect a service charge ~~charges or fees~~ for the acquisition, receipt, warehousing, ~~distribution~~ distribution, or transfer of any State surplus ~~property.~~ property and for the transfer or sale of recyclable material.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and ~~agencies,~~ agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated ~~for,~~ for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State ~~Treasurer, Nontax Revenues.~~ Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

Section 3. This act becomes effective 1 July 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1314*

Short Title: Agency Receipts for Recycling. (Public)

Sponsors: Senators Kinnaird; Albertson, Cochrane, Dalton, Foxx, Jenkins, Lucas, Odom, Perdue, Phillips, and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE AGENCIES TO RETAIN RECEIPTS FROM THE SALE OF RECYCLABLE MATERIALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.02 reads as rewritten:

"**§ 143-64.02. Definitions.**

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

(3) 'Recyclable materials and supplies' means office paper; corrugated cardboard; glass, metal, or plastic food, beverage, or supply

containers; wooden pallets; newspaper; scrap metal; used motor oil; cloth; brush, leaves, grass, twigs, stumps, and other arboreal materials; construction rubble; ash; cooking grease; photographic film and chemicals; telephone directories; and any other materials that are determined by the Secretary of Administration, consistent with G.S. 130A-309.14, to be recyclable materials and supplies."

Section 2. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05. ~~Warehousing, transfer, etc., charges.~~ Fees related to surplus property; use of receipts from surplus property and recyclables.**

(a) The State agency for surplus property may assess and collect service charges or fees for the acquisition, receipt, warehousing, distribution or transfer of any State surplus property.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and ~~agencies,~~ agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for, or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer, Nontax Revenues.

(c) Receipts from the transfer or sale of recyclable materials or supplies may be retained by the department, institution, or agency that recycles them and may be used to defray the costs of its recycling activities. The Secretary of Administration may adopt rules governing the conditions and procedures for retaining receipts by a department, institution, or agency from the sale of recyclable materials and supplies, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

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

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Memorandum

July 14, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Hannah I. Holm, Committee Staff

SUBJECT: Proposed Committee Substitute for Senate Bill 1314 (Agency Receipts for Recycling)

House Bill 1314 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. Its companion bill, House Bill 1472 (Agency Receipts for Recycling), was introduced in the House by Representative Dewey Hill.

Currently, revenues generated by State agencies through the sale of recyclable material must be returned to the General Fund under the same laws that govern revenues from the sale of other surplus State property. Senate Bill 1314 amends the General Statutes governing State surplus property to allow State agencies to retain funds generated through the sale of recyclable material. The funds are to be used by the agencies to defray the costs of their recycling programs.

Section 1 adds the definition of "Recyclable material" to Article 3A (Surplus Property) of Chapter 143 of the General Statutes.

Section 2 allows the State agency for surplus property to collect a service charge for the transfer or sale of recyclable material. Having paid this charge, the department, institution or agency recycling the material may retain the revenues from their sale or transfer and use the revenues to defray recycling costs. The Secretary of Administration is directed to 1) determine which contracts agencies may initiate for the transfer or sale of recyclable material and 2) adopt rules governing the conditions and procedures by which agencies may retain funds generated through the transfer or sale of recyclable material.

Section 3 makes this act effective July 1, 1998.

The Proposed Committee Substitute for Senate Bill 1314 modifies the bill as introduced by 1) replacing the definition of "recyclable materials and supplies" with "recyclable material" as defined in G.S. 130A-290 and determined by the Secretary of Administration; 2) allowing the State agency for surplus property to collect a service charge for transferring and selling recyclable material; 3) directing the Secretary of Administration to determine which contracts agencies may initiate for the transfer or sale of recyclable material, and 4) directing, rather than authorizing, the Secretary of Administration to adopt procedural rules by which agencies may retain revenues from the transfer or sale of recyclable material.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1373
Proposed Committee Substitute S1373-PCSA884-RT002

Short Title: Disapprove Tar-Pamlico Basin Rule. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING THE TAR-PAMLICO RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to G.S. 150B-21.3(b), the amendments to 15A NCAC 2B.0316, (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 15 January 1998, are disapproved. The Environmental Management Commission may adopt, pursuant to G.S. 150B-21.1 and consistent with G.S. 143-214.1, 143-215.1, and 143-215.3(a)(1), a temporary rule that incorporates the amendments to 15A NCAC 2B.0316 that are disapproved by this act, except that the primary classification of the portion of the Tar River designated as Index Number 28-(74) may not be reclassified from WS-IV to WS-V by a temporary rule pursuant to this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1373

Short Title: Disapprove Tar-Pamlico Basin Rule. (Public)

Sponsors: Senators Martin of Pitt and Albertson.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING THE TAR-PAMLICO RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B .0316, (Tar-Pamlico River Basin), as amended by the Environmental Management Commission, and approved by the Rules Review Commission on January 15, 1998, is disapproved.

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

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MEMORANDUM

July 14, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Rick Zechini, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1373 (Disapprove Tar-Pamlico Basin Rule)

Section 1 disapproves amendments made to rule 15A NCAC 2B.0316 (Tar-Pamlico River Basin) that were adopted by the Environmental Management Commission (EMC) and approved by the Rules Review Commission on January 15, 1998. One unintended effect of the amendments would be to reduce the size of the protected area of the Tarboro Water Supply Watershed. Section 1 provides that the EMC may adopt a temporary rule that incorporates the amendments to rule 15A NCAC 2B.0316 that are disapproved by this act, except that the primary classification of the portion of the Tar River designated as Index Number 28-(74) (the section of the Tar River upstream from Tarboro) may not be lowered from WS-IV to WS-V. The effect of this bill is to allow the EMC to quickly make the intended changes to rule 15A NCAC 2B.0316 by temporary rule while maintaining the current size of the protected area of the Tarboro Water Supply Watershed.

Section 2 makes the act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1565

Short Title: Poultry/Ratite Dealers Registration. (Public)

Sponsors: Senators Albertson; and Carpenter.

Referred to: Agriculture/Environment/Natural Resources.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF DEALERS IN POULTRY AND RATITES, TO PROHIBIT SPECIALTY MARKET OPERATORS FROM PERMITTING UNREGISTERED POULTRY OR RATITE DEALERS FROM OPERATING AT SPECIALTY MARKETS, AND TO APPROPRIATE FUNDS FOR THE ENFORCEMENT OF THESE REGISTRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-540(3) reads as rewritten:

"(3) Regulate hatching egg dealers, chick dealers, poult dealers, poultry dealers, ratite dealers, and jobbers."

Section 2. G.S. 106-541 reads as rewritten:

"**§ 106-541. Definitions.**

For the purpose of this ~~Article, a hatchery shall be defined as~~ Article, the following definitions apply:

(1) 'Hatchery' means any establishment that operates hatchery equipment for the production of baby chicks or poults.

(2) ~~A hatching~~ 'Hatching egg dealer, chick ~~dealer or jobber shall mean~~ dealer, or jobber' means any person, ~~firm~~ firm, or corporation that buys hatching eggs, baby ~~chicks~~ chicks, or turkey poults and sells or offers them for sale.

(3) 'Live poultry or ratite dealer' means a person who sells or offers for sale to the general public live poultry or ratites. Live poultry or ratite dealer does not include persons who sell on their own

premises live poultry or ratites that were raised on the same premises.

(4) ~~The term "mixed~~ 'Mixed chicks' or 'assorted chicks' ~~shall mean~~ means chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed.

(5) 'Poultry' means live chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, or turkeys other than chicks or poults.

(6) 'Ratite' has the same meaning as in G.S. 106-549.15."

Section 3. G.S. 106-542 is amended by adding the following new subsections:

"(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first registering with the Department of Agriculture and Consumer Services.

(b2) It shall be unlawful for a specialty market operator, as defined in G.S. 66-250, to knowingly and willfully permit an unregistered poultry or ratite dealer to operate on the premises of the specialty market, as defined in G.S. 66-250, more than 10 days after being notified in writing by the Department of Agriculture and Consumer Services that the dealer is not registered."

Section 4. G.S. 106-547 reads as rewritten:

"**§ 106-547. Records to be kept.**

Every hatchery, hatching egg dealer, chick ~~dealer~~ dealer, poultry dealer, ratite dealer, or jobber shall keep such records of operation as the regulations of the Department of Agriculture and Consumer Services may require for the proper inspection of said hatchery, ~~dealer~~ dealer, or jobber."

Section 5. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year for the enforcement of registration requirements for poultry and ratite dealers.

Section 6. Section 5 of this act becomes effective July 1, 1998. Sections 3 and 4 of this act become effective October 1, 1999. The remaining sections of this act are effective when they become law.

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June 29, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **Senate Bill 1565: Poultry/Ratite Dealers Registration.**

Senate Bill 1565 would require all dealers of live poultry and ratites, other than those who sell birds on their own premises that were raised on their own premises, to register with the North Carolina Department of Agriculture and Consumer Services. The current poultry laws only require hatching egg dealers and chick dealers to obtain a license from the Department.

In addition to the registration requirement, the bill provides that specialty market operators may not knowingly allow an unregistered poultry or ratite dealer to operate on the premises more than 10 days after the operator has received notice from the Department of the dealer's unregistered status. A specialty market operator is one who leases space to another at a location other than a permanent retail store, for the purpose of selling goods at retail (ie. a flea market operator). G.S. 66-250. Live poultry and ratite dealers are further required to keep records as required by the Department.

Persons who fail to comply with the act are guilty of a Class 2 misdemeanor and are subject to civil penalties of up to $5,000. G.S. 106-549 and G.S. 106-549.01.

The sum of $10,000 is appropriated from the General Fund to the Department for the enforcement of the registration requirements.

The definitions sections of the act, Sections 1 and 2, are effective when the bill becomes law. The appropriation becomes effective July 1, 1998. The registration and records requirements become effective October 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

JAMES A. GRAHAM
COMMISSIONER

State of North Carolina
Department of Agriculture
Raleigh

Memorandum

To: Agriculture Committee Members

From: James A. Graham
Commissioner of Agriculture

Date: June 3, 1998

Subject: H.1543/S.1565 - Poultry/Ratite Dealers Registration

Please join me in supporting this bill to protect our $2.4 billion poultry industry from the spread of diseases through unregulated sales of live poultry.

Under existing law, anyone can bring live birds or ratites (ostriches and emus) into North Carolina and sell them at flea markets or other temporary locations. This bill would require these dealers to register with the State, at no charge, and to keep records of their sales. These records will permit us to trace the source of a disease in the event of an outbreak.

This is a minimal requirement that will not prevent anyone from selling live poultry or ratites. People who sell their own birds from their own premises would be exempt.

A more detailed explanation of the bill is attached. We are not aware of any opposition to this bill. It will protect not only our commercial poultry industry, but also the people who have backyard flocks of chickens, geese or ostriches.

Thank you for your continued support of agriculture.

JAG:jm
Attachment

p/rdealr.com

EXPLANATION OF H.1543/S.1565 -
POULTRY AND RATITE DEALERS REGISTRATION

PURPOSE. To protect North Carolina's $2.4 billion poultry industry from the spread of poultry diseases by requiring poultry dealers and ratite dealers to register with the Department of Agriculture and Consumer Services and to keep records of purchases and sales.

BACKGROUND. For many years, the State has licensed hatcheries and chick dealers. These businesses are regulated to prevent the spread of poultry diseases. In recent years, an increasing number of persons are buying and selling live adult birds, mainly at flea markets or other temporary sales locations. These persons are not licensed or regulated. They are not required to keep any records of where they obtained these birds or to whom they were sold. Disease-carrying birds of unknown origin could transmit poultry diseases to North Carolina flocks - not only the State's $2.4 billion commercial poultry industry, but also the thousands of backyard flocks, geese, swans and other birds raised by hobbyists. Ratites (ostriches and emus) would also be included because they are subject to diseases affecting poultry.

WHAT THE BILL WOULD DO. This bill would amend the Hatchery and Chick Dealer Licensing Law to provide for registration of poultry and ratite dealers. No fee would be charged for this registration. It would exempt persons who sell, on their own premises, birds that were raised on those premises.

Since many of the transient (and highest risk) dealers operate at flea markets, this bill would also require the flea market operator to exclude unregistered dealers within 10 days of written notice by the Department of Agriculture and Consumer Services.

The only burden on the dealers would be to register and to keep records of poultry and ratite sales. This would allow the State to trace the source of diseased birds in the event of an outbreak. Failure to register or to keep records would subject the violator to the same criminal and civil penalties as hatcheries and chick dealers. Violation of this law is a Class 2 misdemeanor, and is also subject to a civil penalty of up to $5,000.

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. July 14, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura DeNino	DENR
Steve Caudill	DENR
Glenn Kenyon	Representing citizens of N.C.
E. Woodhouse	NCFA
Shannon Szymczak	The Nature Conservancy - NC Chapter
Bobby Bryan	RRC
Katie Adams	CCNC
Meghan Noble	Sierra Club
Nat Reed	CCNC
A.B. Swindell	BFI
Michelle Cook	Weyerhaeuser

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Case	Hunton + Williams
	NCB
Steve Woodson	NC Farm Bureau Federation
Dan McCumber	DENR
Kelli Kukura	DuPont
Tommy Stevens	DNQ
Doug Lassiter	NC Septic Tank Assoc
John Cyrus	N.C. State Grange
	NCDA
Wilda Denny	NCDA&CS
	NCPC

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lu-Ann Cole	777
Laura Hartsell	Manufacturers' Chemical Industry Council
Bob Slocum	NC FORESTRY Assoc.
Roger Bone	Bone + Assoc - Pork Council
Perry Richardson, J.	DOA / P+C
D. Holmes	DENR
Rachel Watkins	Graduate Student, UNC-CH
Katherine Kuffel	Graduate Student, UNC-CH
Amy Fullbright	Hunton & Williams
Stuart Watson	WRAL-TV

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 21, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 21, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were on the agenda and all distributed material as well as copies of the bills are attached:

HOUSE BILL 1462 - CERTAIN SEPTIC TANK DEVICES REQUIRED - Representative Culp, sponsor, was recognized to explain the bill. There was a proposed committee substitute before the committee and Senator Odom moved that it be adopted for discussion purposes. Motion carried. George Givens of staff answered questions from members. Speaking in favor of the bill was Doug Lassiter of the N. C. Septic Tank Association. Linda Sewall of DEHNR made comments on the bill and answered questions from the committee as did Steve Steinbeck of the Waste Water Section. Senator Horton sent forth an amendment and moved for its adoption. Motion carried. Senator Odom moved that committee counsel incorporate verbage of the amendment into a second PCS and that this second PCS be given a favorable report. Motion carried.

HOUSE BILL 1529 - HORSE PROMOTION ASSESSMENT - Representative Brown, sponsor, was recognized to explain the bill. Barbara Riley of staff answered questions from committee. There was a proposed committee substitute before the committee and Senator McDaniel moved for its adoption for discussion purposes. Motion carried. This bill calls for a $2.00/ton assessment on horse feed. Senator Garwood moved that the PCS be given a favorable report, unfavorable as to original bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 21, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

HB 1462 — CERTAIN SEPTIC TANK DEVICES REQUIRED
Representative Culp

HB 1529 — HORSE PROMOTION ASSESSMENT
Representative Brown

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Wednesday, July 22, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS#2)**1529** HORSE PROMOTION ASSESSMENT

Draft Number:	PCS1601
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	NO

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, July 23, 1998

SENATOR ALBERTSON,
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)**1462** CERTAIN SEPTIC TANK DEVICES REQUIRED.

Draft Number:	PCS2402
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	YES

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1462*
Committee Substitute Favorable 6/25/98
Proposed Senate Committee Substitute H1462-PCS2402-RT003

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT CERTAIN NEW SEPTIC TANK SYSTEMS INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the

facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
(3) Prevent water entry.
(4) Come to within six inches of the finished grade.
(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335, as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 November 1998. Temporary rules adopted under this section shall become effective on 1 December 1998. The requirements of G.S. 130A-335, as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335 and this section shall apply to any septic tank system that is designed to treat 3,000 gallons per day or less of sewage for which a permit is issued on or after 1 December 1998.

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

Old one passed in committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1462*
Committee Substitute Favorable 6/25/98
Proposed Senate Committee Substitute H1462-PCS1598-RT002

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT EACH NEW SEPTIC TANK SYSTEM INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND TO ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an approved effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The specifications for the effluent filter and access device shall meet

but not exceed the requirements of G.S. 130A-335.1. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State shall provide an approved effluent filter that meets the requirements of G.S. 130A-335(f), this section, and rules adopted by the Commission. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An approved effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.

(3) Prevent water entry.

(4) Come to within six inches of the finished grade.

(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 November 1998. Temporary rules adopted under this section shall become effective on 1 December 1998. The effluent filters and access devices required by G.S. 130A-335(f), as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335(f) and this section shall apply to any new septic tank system for which a permit is issued on or after 1 December 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1462*
Committee Substitute Favorable 6/25/98

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT EACH NEW SEPTIC TANK SYSTEM INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND TO ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The specifications for the effluent filter and access device shall meet but not exceed the requirements of G.S. 130A-335.1. The Department and local health

departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State shall provide an effluent filter that meets the requirements of G.S. 130A-335(f), this section, and rules adopted by the Commission. The Commission shall require that a qualified expert who is independent of any manufacturer of effluent filters or septic tanks establish that the effluent filter meets the requirements of this section and rules adopted under this section. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. The effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Reduce the total suspended solids that enter the drainfield by a minimum of twenty-five percent (25%) of the total suspended solids that would enter the drainfield in the absence of the effluent filter.

(3) Be designed to allow for routine maintenance.

(4) Under normally anticipated use, not require maintenance more frequently than once in any three-year period.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to meet a minimum uniform load of 150 pounds per square foot without damage to the septic tank, riser, or cover.

(3) Prevent water entry.

(4) Come to within six inches of the final grade when the surface has been finally landscaped.

(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 November 1998. Temporary rules adopted under this section shall become effective on 1 December 1998. The effluent filters and access devices required by G.S. 130A-335(f), as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335(f) and this section shall apply to any new septic tank system for which a permit is issued on or after 1 December 1998.

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

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Memorandum

July 21, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for House Bill 1462, 2nd Edition (Certain Septic Tank Devices Required)

House Bill 1462 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. The companion bill to House Bill 1462, Senate Bill 1303 (Certain Septic Tank Devices Required), was introduced in the Senate by Senator Fountain Odom. House Bill 1462, 2nd Edition is identical to the Proposed Senate Committee Substitute for Senate Bill 1303 that received a favorable report from this Committee on June 29, 1998.

Section 15.16(c) of S.L. 1997-443 (The 1997 Budget Bill) directed the Environmental Review Commission (ERC) to study the development of best management practices for the installation of new septic tank systems and for the replacement or improvement of existing septic tank systems. The ERC heard presentations on best management practices for septic tank systems on November 24, 1997 and April 13, 1998. Based on these presentations, the ERC recommended a legislative proposal that requires certain devices for new septic tank systems. This legislative proposal was introduced in the House of Representatives by Representative Arlie Culp as House Bill 1462 (Certain Septic Tank Devices Required).

Proposed Committee Substitute for House Bill 1462, 2nd Edition

The primary changes made by the Proposed Committee Substitute for House Bill 1462, 2nd Edition are the:

- Elimination of the requirement that an independent, third-party expert establish that a particular effluent filter meets the requirements established by rules adopted pursuant to this act
- Replacement of the requirement that a filter reduce by 25% the amount of suspended solids that enter the drainfield with the requirement that the filter prevent solid material larger than 1/16 of an inch, as measured along the shortest axis, from entering the drainfield
- Replacement of the requirement that the access device be designed to meet at least a 150 pound per square foot load without damage to the septic tank, riser, or cover with the requirement that the access device be designed to equal or exceed the minimum loading specifications applicable to the septic tank

The **Proposed Committee Substitute for House Bill 1462, 2nd Edition**, specifically provides for the following:

Section 1 directs the Commission to adopt rules that require each septic tank to employ an approved effluent filter to reduce the total suspended solids entering the drainfield as well as an access device to facilitate service maintenance.

Section 2 establishes the requirements and standards for the effluent filters and access devices required by this act.

Section 2(a) requires that manufacturers of septic tanks installed in this State provide an approved filter that meets the requirements of this act and rules adopted by the Commission. An approved filter must:

- Be made of noncorrosive materials
- Prevent solid material larger than 1/16 of an inch, as measured along the shortest axis, from entering the drainfield
- Be designed to allow routine maintenance
- Require maintenance only once every three years when used under normally anticipated conditions

Section 2(b) requires that an access device provide access to each compartment of a septic tank for inspection and maintenance and that it include an appropriate cover. This section also requires that an access device must:

- Be large enough to facilitate inspection and service
- Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank
- Prevent water entry
- Come within six inches of the finished grade
- Be visibly marked for ready location

Section 3 directs the Commission to adopt temporary rules to implement standards for effluent filters and access devices no later than November 1, 1998. These temporary rules become effective on December 1, 1998. This section also provides that the effluent filters and access devices required by this act apply only to new septic tanks for which a permit is issued on or after December 1, 1998.

Section 4 makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/30/98
Fourth Edition Engrossed 7/9/98
Proposed Senate Committee Substitute H1529-PCS1601-RF002

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.
(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"**§ 106-823. Referendum.**

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.
(2) The period for which the assessment shall be levied, not to exceed three years.
(3) The time and place of the referendum.
(4) Procedures for conducting the referendum and counting votes.
(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"**§ 106-824. Majority vote required; collection of assessment.**

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The Council may bring an action to collect unpaid assessments against any horse owner, feed manufacturer, or distributor who fails to pay the assessment and, if successful, shall recover the cost of such action, including attorneys' fees.

"**§ 106-825. Use of funds; refunds.**

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Council within 30 days of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"**§ 106-550. Policy as to promotion of use of, and markets for, farm products.**

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or horses, with respect to which separate provisions have been made."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/30/98
Fourth Edition Engrossed 7/9/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.
(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"**§ 106-823. Referendum.**

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.
(2) The period for which the assessment shall be levied, not to exceed three years.
(3) The time and place of the referendum.
(4) Procedures for conducting the referendum and counting votes.
(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. The Council must send press releases of the referendum to newspapers in the State and to any appropriate trade journal identified by the Council. The Council shall also have posted a notice of the referendum in every place the Council identifies where commercial horse feed is sold. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"**§ 106-824. Majority vote required; collection of assessment.**

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The assessment is voluntary. A person responsible for paying the assessment on a purchase may elect not to pay the assessment by filing in lieu of the report a certification that the person elects not to pay.

(c) The Council may bring an action to collect unpaid assessments against any horse owner, feed manufacturer, or distributor who fails to pay the assessment and, if successful, shall recover the cost of such action, including attorneys' fees. The Council shall not bring an action under this subsection against any person who has exercised that person's right to refuse in writing to pay the assessment under G.S. 106-825(b).

"**§ 106-825. Use of funds; refunds.**

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid has the right to refuse in writing to pay the assessment. The seller shall reduce the price accordingly and may seek a refund of the refused assessment by making demand in writing to the Council within 30 days of purchase of the feed. This demand shall be accompanied by proof of refusal satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"**§ 106-550. Policy as to promotion of use of, and markets for, farm products.**

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or horses, with respect to which separate provisions have been made."

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

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July 21, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: **House Bill 1529: Horse Promotion Assessment**

House Bill 1529, introduced by Representative Brown, provides for a referendum to allow horse owners to assess themselves, through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council to promote the interests of the horse industry.

The North Carolina Horse Council is authorized to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection fee imposed under the Commercial Feed Law, Article 31C of Chapter 106 of the General Statutes. Anyone who purchases commercial horse feed may demand a refund of the assessment by writing the Horse Council within 30 days of buying the feed and providing proof of purchase.

The Department is to remit funds to the North Carolina Horse Council at least quarterly. These funds may be used by the Horse Council to promote the interests of the horse industry, including administrative expenses to carry these functions.

The act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 7/21/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phillip Fouracre	Sen. Basnight's Off.
Crissy Parker	Bone & Associates
Joe McClees	N.C. Septic Tank Ass
Dory Lassiter	" " " "
Wilson Benny	NCNBCS
Margie Rhodes	NC Horse Council
David Meredith	NC State Grange
John Cyrus	N.C. State Grange
B.J. McMillian	Visiting Student
B & Gardner	NC Horse Council
Steve Woodson	NC Farm Bureau Federation

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 7/21/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDA FCS
Linda Sewell	DEH
Bill Peter	DEH On-site
STEVE STEINBECK	DEH On-Site Wastewater
Katie Adams	CCNC
Kim Smith	NCLM
Ed Regan	N.C.A.C.C.
Paul Wilms	NCHBA
Mike Carpenter	NCHBA
Lauren DeVico	DENR
Richard Rogers	DENR
Tommy Stevens	DENR

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 7/21/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Holmes	DENR
Laura Hartsell	MCIC
Rob Schofield	NCJCDC

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

MEMBER	LOCATION	PHONE	SECRETARY
Albertson, Charles W., **Chairman**	525 LOB	3-5705	Julia Birdsong Committee Clerk
Gulley, Wib, **Vice Chairman**	408 LOB	5-3036	Carol Resar
Horton, Hamilton C., Jr., **Vice Chairman**	1406 LB	3-3272	Genie Clark
Wellons, Allen H., **Vice Chairman**	1026 LB	3-5850	Frances Drew
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Kinnaird, Ellie	2115 LB	3-5804	Kathie Young
McDaniel, J. Mark, Jr.	522 LOB	3-5620	Wanda Joyner
Miller, Brad	621 LOB	3-9349	Cornelia McMillan
Odom, Fountain	300B LOB	3-5707	Anne Wilson
Page, Dan	1414 LB	3-7659	Barbara Eldridge
Perdue, Beverly E.	629 LOB	3-2055	Anne Canady
Phillips, Jim W., Sr.	628 LOB	3-5870	Gerry Bowles
Weinstein, David F.	2108 LOB	3-5651	Terry Lefort

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Holm, Hannah	LOB 545	3-2578
Hudson, Jeffrey	LOB 545	3-2578
Riley, Barbara	LOB 545	3-2578
Zechini, Rick	LOB 545	3-2578

Rev. 7/2/98

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 15-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 4	HOLMES	YADKINVILLE SEWAGE TREATMENT CONTRAC	R -CH. SL 97-0003	02-25-97	03-04-97
H 16	HALL	NO ANIMAL WASTE SYS. IN FLOODPLAINS	*S -REF TO COM ON AGRICUL&	03-18-97	
H 188=	CULP	ENVIRONMENTAL TECH. CORRECTIONS	*S -REF TO COM ON AGRICUL&	04-22-97	
H 189=	CULP	DRINKING WATER AMENDS	R -CH. SL 97-0030	04-01-97	04-08-97
H 194=	CULP	STATE REVOLVING WATER FUND ACCOUNT	*R -CH. SL 97-0206	05-29-97	06-03-97
H 210=	BROWN	AG DEPT. NAME CHANGE	*R -CH. SL 97-0261	03-03-97	03-18-97
H 211=	CULP	AMEND ENVIRONMENTAL LAWS-2	*R -CH. SL 97-0496	04-22-97	07-29-97
H 227=	HACKNEY	INACTIVE HAZ. SITES RECORDATION	*R -CH. SL 97-0528	04-16-97	06-16-97
H 238=	MITCHELL	FACILITATE ANIMAL WASTE RESEARCH	*HF-POSTPONED INDEFINITELY	03-18-97	04-15-97
H 239	MITCHELL	ENVIRON. MANAGEMENT MEMBERSHIP	R -CH. SL 97-0381	04-10-97	07-29-97
H 240=	MITCHELL	REMOVE ODOR CONTROL STUDY MATCH	*S -REF TO COM ON APPROPR	03-03-97	03-25-97
H 251=	CULP	WELL CONTRACTORS CERTIFICATION	*R -CH. SL 97-0358	06-16-97	06-26-97
H 302	HUNTER H	WILDLIFE/RABIES EMERGENCY	*R -CH. SL 97-0402	05-06-97	07-29-97
H 409=	YONGUE	AGRICULTURAL EMPLOYER APPEALS	R -CH. SL 97-0035	03-24-97	04-03-97
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	05-14-97	06-23-97
H 457	WEATHERLY	AMEND FOREST DEVELOPMENT ACT	*R -CH. SL 97-0352	05-06-97	06-16-97
H 460	CULPEPPER	ABOLISH AQUARIUMS COMMISSION	*R -CH. SL 97-0286	05-06-97	05-19-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	05-06-97	05-29-97
H 515	MORGAN	CLEAN WATER RESPONSIBILITY ACT	*R -CH. SL 97-0458	05-06-97	06-09-97
H 577	WEATHERLY	FORESTER REGISTRATION	*R -CH. SL 98-0157	07-17-97	08-18-98
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	05-06-97	
H 900	**WATSON**	**FEDERAL MATCH REQUIRED-9/30/98-3**	***R -CH. SL 98-0166**	**05-06-97**	**09-29-98**
H 935	BEALL	PROMOTE LLAMA BREEDING	R -CH. SL 97-0084	04-28-97	05-13-97
H 998=	**BROWN**	**FEDERAL MATCH REQUIRED-9/30/98**	***HF-POSTPONED INDEFINITELY**	**06-18-97**	**06-26-97**
H 999	ROGERS	SOIL & WATER COMMISSION/INSPECTIONS	*R -CH. SL 97-0173	05-06-97	05-22-97
H1009=	MORRIS	NOTICE OF HAZARDOUS DISCHARGE	*S -REF TO COM ON AGRICUL&	05-06-97	
H1011=	CAPPS	LOW PRESSURE PIPE EMERG. FUND	*S -RE-REF COM ON AGRICUL&	07-22-97	07-29-97
H1011=	CAPPS	LOW PRESSURE PIPE EMERG. FUND	*S -RE-REF COM ON AGRICUL&	08-19-97	
H1032	ALLRED	AUTHORIZE LANDFILL LINER	*R -CH. SL 97-0374	04-29-97	06-26-97
H1037	ARNOLD	SALE OF CERTAIN EXOTIC MEATS	*S -REF TO COM ON AGRICUL&	05-06-97	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 15-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1055=	**RUSSELL**	**ARBITRATION OF SEED CLAIMS**	***R -CH. SL 98-0210**	**09-14-98**	**09-21-98**
H1059	WRIGHT	CAMA/URBAN WATERFRONT REDEVELOP	*R -CH. SL 97-0337	05-06-97	06-19-97
H1097	**PRESTON**	**FISHERIES REFORM ACT-2**	***R -CH. SL 97-0400**	**06-11-97**	**07-23-97**
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	05-06-97	
H1121	**MCCOMAS**	**BROWNFIELD PROPERTY REUSE ACT**	***R -CH. SL 97-0357**	**06-19-97**	**07-03-97**
H1402	CREECH	NEUSE BUFFERS/OTHER ENV. AMENDS	*R -CH. SL 98-0221	09-07-98	10-27-98
H1410=	PRESTON	EXTEND CORE SOUND MORATORIUM	*H -CH. SL 98-0056	06-18-98	07-07-98
H1415=	HILL	IMPROVE SEDIMENTATION CONTROL	R -CH. SL 98-0099	06-17-98	08-04-98
H1433=	HILL	EXTEND/EXPAND ENV. HEALTH STUDY	R -CH. SL 98-0076	06-17-98	07-28-98
H1448=	PRESTON	MARINE FISHERIES AMENDMENTS	*R -CH. SL 98-0225	09-17-98	09-21-98
H1462=	CULP	CERTAIN SEPTIC TANK DEVICES REQUIRED	*R -CH. SL 98-0126	07-07-98	07-23-98
H1462=	CULP	CERTAIN SEPTIC TANK DEVICES REQUIRED	*R -CH. SL 98-0126	07-27-98	08-06-98
H1472=	HILL	AGENCY RECYCLING/FAMILY FARMS STUDY	*R -CH. SL 98-0223	10-07-98	10-27-98
H1479=	WATSON	LAGOON PHASE-OUT STUDY	*S -REF TO COM ON AGRICUL&	07-13-98	
H1480=	WATSON	SWINE INTEGRATOR REGISTER GROWERS	*R -CH. SL 98-0188	09-24-98	10-08-98
H1483=	MITCHELL	EXPEDITE LOW RISK CLOSURES	*R -CH. SL 98-0161	09-07-98	09-10-98
H1490=	WEATHERLY	EXTEND SUBMERGED LAND CLAIMS	R -CH. SL 98-0179	09-07-98	09-21-98
H1529=	BROWN	HORSE PROMOTION ASSESSMENT	*R -CH. SL 98-0154	07-13-98	07-22-98
S 110	PERDUE	ESTABLISH ENVIRONMENTAL CABINET	*H -REF TO COM ON RULES	02-13-97	02-26-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*R -CH. SL 97-0493	02-17-97	03-18-97
S 114=	HORTON	LOCAL WATER QUALITY/LUST CLEANUP	*R -CH. SL 97-0493	03-19-97	04-03-97
S 120	KERR	AGRIC COST SHARE FUNDING LIMITS	S -REF TO COM ON AGRICUL&	02-17-97	
S 125=	ODOM	BROWNFIELDS/PROPERTY USE RESTRICT	*R -CH. SL 97-0394	02-17-97	04-22-97
S 126=	ODOM	SOLID WASTE PERMIT REQUIREMENTS	*R -CH. SL 97-0027	02-17-97	03-11-97
S 138=	ODOM	DISSOLVE SANITARY DISTRICT	*R -CH. SL 98-0123	02-17-97	03-04-97
S 138=	ODOM	DISSOLVE SANITARY DISTRICT	*R -CH. SL 98-0123	08-12-98	
S 140=	ODOM	INCREASE ERC MEMBERSHIP	R -CH. SL 97-0031	02-17-97	02-26-97
S 150=	COOPER	INACTIVE HAZARDOUS SITES REPORTS	R -CH. SL 97-0028	02-17-97	03-11-97
S 151=	COOPER	INACTIVE HAZARDOUS SITES INFO	R -CH. SL 97-0053	02-17-97	03-11-97
S 169=	ALBERTSON	ENVIRONMENTAL TECH CORRECTIONS	*H -CAL PURSUANT RULE 36(A)	02-17-97	04-22-97

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 15-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	02-18-97	03-20-97
S 177=	KINNAIRD	CLEAN WATER TRUST FUNDS/LOANS OK	S -REF TO COM ON AGRICUL&	02-18-97	
S 178=	HORTON	AMEND NATURAL HERITAGE TRUST FUND	*R -CH. SL 97-0366	02-18-97	04-22-97
S 182	KINCAID	WILDLIFE COMM. TEMPORARY RULES	*R -CH. SL 97-0403	02-19-97	04-08-97
S 191=	ALBERTSON	REMOVE ODOR CONTROL STUDY MATCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 192=	ALBERTSON	FACILITATE ANIMAL WASTE RESEARCH	S -REF TO COM ON AGRICUL&	02-19-97	
S 193	**ALBERTSON**	**ON-SITE WASTEWATER SYS.**	***S -RE-REF COM ON APPROPR**	**04-23-97**	**04-28-97**
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	02-19-97	04-28-97
S 194=	ALBERTSON	AMEND ENVIRONMENTAL LAWS	*S -REF TO COM ON AGRICUL&	07-30-97	
S 195=	ALBERTSON	AG DEPT.NAME CHANGE	S -REF TO COM ON AGRICUL&	02-19-97	
S 221=	HORTON	NITROGEN LIMIT FOR CERTAIN WATERS	S -REF TO COM ON AGRICUL&	02-24-97	
S 259=	ODOM	BACKUP POWER FOR WASTEWATER SYS	S -REF TO COM ON AGRICUL&	02-27-97	
S 261=	ODOM	WELL CONTRACTORS CERTIFICATION	*S -RE-REF COM ON FINANCE	02-27-97	06-03-97
S 266	LEDBETTER	PRODUCTION AND SALE OF RED DEER	*R -CH. SL 97-0142	02-27-97	03-18-97
S 287	**PERDUE**	**MONITOR COASTAL WATER QUALITY**	**S -RE-REF COM ON APPROPR**	**03-03-97**	**03-24-97**
S 477	PERDUE	SEPTIC TANK SYSTEMS BMPS	*S -RE-REF COM ON FINANCE	03-25-97	04-24-97
S 478	KINNAIRD	SWINE FARM SITING ACT-3	S -REF TO COM ON AGRICUL&	03-25-97	
S 537=	JENKINS	ADDITION TO STATE PARKS SYSTEM	*R -CH. SL 97-0276	03-27-97	04-22-97
S 545=	MILLER B	SALE OF NAT. SCI. MUSEUM OBJECTS	H -ASSIGNED TO APP-GGOV	03-27-97	04-15-97
S 671=	ALBERTSON	WASTEWATER IMPR0VEMENTS PERMITS	*S -RE-REF COM ON RULES &	04-02-97	05-21-97
S 755=	REEVES	NO LOW-LEVEL FACILITY/FLOOD PLAN	S -REF TO COM ON AGRICUL&	04-08-97	
S 845	ODOM	SCHOOL BUSES FOR SPECIAL OLYMPICS	*R -CH. SL 98-0010	04-15-97	04-24-97
S 859=	LEE	PRESCRIBED BURNING IN FORESTS	*H -REF TO COM ON RULES	04-15-97	04-28-97
S 874=	**KERR**	**RESOLUTION OF SEED CLAIMS**	***S -RE-REF COM ON FINANCE**	**04-15-97**	**06-03-97**
S 918=	PHILLIPS	NOTICE OF HAZARDOUS DISCHARGE	*S -FAILED CONCUR IN COM SUB	04-17-97	04-28-97
S 947	COCHRANE	AMEND INTERBASIN TRANSFERS	*R -CH. SL 97-0524	04-17-97	04-29-97
S 954	WEBSTER	EXOTIC ANIMAL REGISTRY	S -REF TO COM ON AGRICUL&	04-17-97	
S 969	KINNAIRD	AIR QUALITY STANDARD/HOG FARMS	S -REF TO COM ON AGRICUL&	04-21-97	
S 977=	**ALBERTSON**	**SOUTHERN DAIRY COMPACT**	***R -CH. SL 97-0494**	**04-21-97**	**08-14-97**
S 984	ALBERTSON	ENVIROMENTAL POLICY	S -RE-REF COM ON AGRICUL&	08-05-97	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: AGRICULTURE / ENVIRON / NATURAL RESOURCES — Valid Through 15-DEC-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 985	MARTIN R	ALTERNATE LANDFILL LINER	S -REF TO COM ON AGRICUL&	04-21-97	
S1002	KINNAIRD	STRENGTHEN MINING ACT	S -REF TO COM ON AGRICUL&	04-21-97	
S1018	**ALBERTSON**	**NUTRIENT/PESTICIDE MGT. EDUCATION**	**S -REF TO COM ON AGRICUL&**	**04-21-97**	
S1022	KINNAIRD	ASPHALT EMISSIONS MONITORING	S -RE-REF COM ON RULES &	04-21-97	07-17-97
S1041=	MILLER B	LOW PRESSURE PIPE EMERG. FUND	S -REF TO COM ON AGRICUL&	04-21-97	
S1043	ALBERTSON	COMPREHENSIVE WATER QUALITY MNGT	S -REF TO COM ON AGRICUL&	04-21-97	
S1265=	BALLANTINE	BEACH RENOURISH/RESERVE FUNDS	S -REF TO COM ON AGRICUL&	05-27-98	
S1274=	ALBERTSON	CHILDHOOD LEAD EXPOSURE AMENDS	*R -CH. SL 98-0209	05-27-98	06-02-98
S1276=	ALBERTSON	EXTEND CORE SOUND MORATORIUM	H -REF TO COM ON ENVIRON	05-27-98	06-02-98
S1284=	ALBERTSON	1998 MARINE FISHERIES AMENDMENTS	*S -RE-REF COM ON FINANCE	05-27-98	09-01-98
S1285=	ALBERTSON	AG. TRANSPORT/TEMP CONSERVATION RULE	*R -CH. SL 98-0165	08-12-98	08-18-98
S1294=	PERDUE	EXTEND/EXPAND ENV. HEALTH STUDY	S -RE-REF COM ON APPROPR	05-27-98	06-09-98
S1299=	COCHRANE	INTERBASIN TRANSFER AMENDMENTS	*R -CH. SL 98-0168	05-27-98	08-10-98
S1302=	ODOM	SWINE INTEGRATOR REGISTER GROWERS	S -REF TO COM ON AGRICUL&	05-27-98	
S1303=	ODOM	CERTAIN SEPTIC TANK DEVICES REQUIRED	*H -REF TO COM ON ENVIRON	05-27-98	06-23-98
S1304=	ODOM	LAGOON PHASE OUT STUDY	S -REF TO COM ON AGRICUL&	05-27-98	
S1313=	KINNAIRD	IMPROVE SEDIMENTATION CONTROL	H -REF TO COM ON RULES	05-27-98	06-09-98
S1314=	KINNAIRD	AGENCY RECEIPTS FOR RECYCLING	*H -CAL PURSUANT RULE 36(A)	05-27-98	07-15-98
S1315=	KINNAIRD	LAGOON CLOSURE STUDY	S -REF TO COM ON AGRICUL&	05-27-98	
S1329=	ODOM	WATER QUALITY FEES/CDE LUST CLEANUPS	S -REF TO COM ON AGRICUL&	05-27-98	
S1331=	HORTON	END CDE LUST CLEANUPS	S -REF TO COM ON AGRICUL&	05-27-98	
S1373	MARTIN R	DISAPPROVE TAR-PAMLICO BASIN RULE	*R -CH. SL 98-0138	05-27-98	07-14-98
S1565=	**ALBERTSON**	**POULTRY/RATITE DEALERS REGISTRATION**	**S -RE-REF COM ON APPROPR**	**06-01-98**	**06-17-98**
S1565=	**ALBERTSON**	**POULTRY/RATITE DEALERS REGISTRATION**	**S -RE-REF COM ON APPROPR**	**06-22-98**	**07-14-98**
S1598	HORTON	DISAPPROVED LUST RISK-ASSESSMENT RUL	S -REF TO COM ON AGRICUL&	06-30-98	

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MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

July 28, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, July 28, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were nine committee members present.

The following bill was on the agenda and all distributed material as well as a copy of the bill is attached:

HOUSE BILL 1433 - EXTEND/EXPAND ENV. HEALTH STUDY - Representative Hill, sponsor, explained the bill. Senator Perdue moved that the bill be given a favorable report. Motion passed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, July 28, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

HB 1433 EXTEND/EXPAND ENV. HEALTH STUDY
Representative Hill

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, July 28, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1433** EXTEND/EXPAND ENV. HEALTH STUDY.
Sequential Referral: NONE
Recommended Referral: NONE

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1433*

Short Title: Extend/Expand Env. Health Study. (Public)

Sponsors: Representative Hill.

Referred to: Environment, if favorable, Appropriations.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE STUDY OF THE ORGANIZATIONAL STRUCTURE AND ADMINISTRATIVE PLACEMENT OF THE PROGRAMS IN THE DIVISION OF ENVIRONMENTAL HEALTH OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND TO EXPAND THE SCOPE OF THE STUDY TO INCLUDE THE ORGANIZATION, FUNCTIONS, POWERS, AND DUTIES OF THE VARIOUS BOARDS, COMMISSIONS, AND COUNCILS HAVING JURISDICTION OVER ENVIRONMENTAL, PUBLIC HEALTH, AND NATURAL RESOURCES PROGRAMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11A.127 of S.L. 1997-443 reads as rewritten:

"Section 11A.127. Pending ~~the results of~~ action by the General Assembly on the recommendations of the Environmental Review Commission resulting from the study to be undertaken by the Environmental Review Commission as provided in this Part, on-site wastewater functions, public drinking water programs, and environmental health programs shall remain in the Department of Environment and Natural Resources, the Division of Environmental Health, shall remain intact in the Department of Environment and Natural Resources, and the Department of Environment and Natural Resources shall not consolidate on-site wastewater functions or drinking water programs in the Division of Water Quality."

Section 2. Section 11A.128 of S.L. 1997-443 reads as rewritten:

"Section 11A.128. The Environmental Review Commission shall study the following issues and report its findings to the ~~1997 General Assembly, Regular~~

~~Session 1998,~~ 1999 General Assembly, along with any legislation it proposes to address these issues:

(1) The appropriate roles and financing of local and state agencies in reviewing, permitting, inspecting, and monitoring private wells, community wells, municipal wells, and municipal surface water supplies;

(2) The appropriate roles and financing of local and State agencies in reviewing, permitting, inspecting, monitoring, and maintaining septic tanks, package wastewater treatment plants, municipal wastewater treatment plants, industrial treatment plants, and animal waste operations;

(3) The appropriate roles and financing of local and State agencies in administering the various environmental health programs;

(4) The integration of State's review of the financial integrity of applicants for drinking water and wastewater discharge permits;

(5) Policies to monitor the quality and prevent and reduce pollution of groundwaters;

(6) Consistent State policies for cleaning up contaminated groundwater and soils;

(7) Coordination of adoption and development of policies by the Coastal Resources Commission, Environmental Management Commission, Commission on Health Services, Marine Fisheries Commission, and other commissions having roles in water quality or wastewater issues;

(8) Policies to monitor the quality and prevent and reduce pollution of surface waters;

(9) Organization of the State's water planning agencies;

(10) Technical and financial assistance to business, industry, local governments, and citizens;

(11) Policies to encourage water conservation;

(12) Policies to encourage regional water supply and wastewater treatment planning; and

(13) The role of the North Carolina Cooperative Extension Services, North Carolina Department of Agriculture, and the North Carolina Department of Transportation in the protection of water supplies.

(14) The organization, functions, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs, including whether those functions, powers, and duties should be consolidated in a single commission."

Section 3. Section 11A.129 of S.L. 1997-443 reads as rewritten:

"Section 11A.129. The Secretary of Health and Human Services may reorganize the Department of Health and Human Services in accordance with G.S. 143B-10 and

shall report as required by that section. In addition, the Department of Health and Human Services shall do the following:

(1) Report to the Joint Legislative Commission on Governmental Operations by December 31, 1997, on the Department's progress in incorporating health functions and agencies into the Department;

(2) Report to the General Assembly by ~~May 1, 1998,~~ 1 February 1999 on additional changes, including proposed legislation necessary to effectuate the purposes of this Part including the findings of the Environmental Review Commission's study.

(3) Report to the Joint Legislative Commission on Governmental Operations by ~~October 31, 1998,~~ 1 February 1999 on any proposed changes in the Department's structure of boards and commissions not already implemented as a result of the Environmental Review Commission's study or necessary to effectuate the purposes of this Part and to deliver services more efficiently;

(4) Report to the General Assembly by February 1, 1999, on the Department's progress in adopting any rule changes necessary to effectuate the purposes of this Part and any proposed legislation necessary to change the structure of any boards and commissions as reported to the Joint Legislative Commission on Governmental Operations."

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

North Carolina General Assembly
Legislative Services Office

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Memorandum

July 28, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel
George Givens, Committee Counsel

SUBJECT: House Bill 1433 (Extend/Expand Env. Health Study)

House Bill 1433 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission (ERC). The companion bill to House Bill 1433, Senate Bill 1294 (Extend/Expand Env. Health Study), was introduced in the Senate by Senator Beverly Perdue and received a favorable report from this Committee on June 9, 1998.

Chapter 443 of the 1997 Session Laws (1997 Budget Bill) transferred all health-related agencies, other than the Division of Environmental Health, from the Department of Environment, Health, and Natural Resources to the Department of Human Resources. It also renamed the two departments the Department of Environment and Natural Resources (DENR) and the Department of Health and Human Services (DHHS), respectively. Sections 11A.127 and 11A.128 of the 1997 Budget Bill specifically provided that the on-site wastewater, public drinking water, and environmental health programs would remain as separate programs within the Division of Environmental Health in DENR pending the results of an ERC study. This study included consideration of the appropriate roles and financing of local and State agencies regarding wastewater treatment, drinking water supplies, and environmental health programs. The ERC was to report its findings and legislative proposals to the 1998 Regular Session of the 1997 General Assembly.

During the course of this study, the interested parties realized that resolution of the issues involved also required consideration of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs. Based on this realization, a proposal to extend and expand the study was presented at the March 23, 1998 meeting of the ERC. This proposal was subsequently recommended by the ERC and introduced as House Bill 1433 and Senate Bill 1294. These bills extend the reporting dates for the study and expand it to include the issue of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 1 provides that, until the General Assembly acts on recommendations from the ERC study described in Section 2 of this bill, the on-site wastewater, public drinking water, and environmental health programs will remain as separate programs within the Division of Environmental Health in DENR.

Section 2 extends until the 1999 General Assembly the time by which the ERC must report on the appropriate roles and financing of local and State agencies regarding wastewater treatment, drinking water supplies, and environmental health programs. This section also adds a study of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs.

Section 3 delays until February 1, 1999, the date by which DHHS must report to:

- The ERC regarding additional changes necessary to effectuate the transfer of health-related agencies from DENR to DHHS
- The Joint Legislative Commission on Governmental Operations regarding any proposed changes in the structure of DHHS related boards and commissions

Section 4 makes this act effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 7/28/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Bradley	NCCBD
Paul Wilms	NCMBA
Doug Lassiter	NC Septic Tank Assoc
David Harvey	OSPL
Linda Sewell	DEH
Jon Levine	DHHS
Paul S Rau	N.C. Agribusiness Council
Jon Hunt	NCPC

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

August 4, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, August 4, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

Senator Albertson announced that **HOUSE BILL 1462 - CERTAIN SEPTIC TANK DEVICES REQUIRED** which was reported out of committee on July 21, 1998, had been re-referred to our committee because there some concerns regarding it. He appointed a subcommittee to work out these concerns as follows: Senator Wellons, chair; Senator Odom; Senator Cochrane; and Senator Albertson.

The following bills were on the agenda and all distributed material as well as copies of the bills are attached:

HOUSE BILL 1415 - IMPROVED SEDIMENTATION CONTROL - Representative Hill, sponsor, was recognized to explain the bill. Senator Odom moved that the bill be given a favorable report. Motion carried.

SENATE BILL 1299 - INTERBASIN TRANSFER AMENDMENTS - Senator Cochrane, sponsor, explained the bill. There was a proposed committee substitute before the committee and Senator Odom moved for its adoption for discussion purposes; however, Senator Albertson said no vote would be taken on this bill at today's meeting. Emily Johnson of staff further explained the bill. Bill Holman, Department of Environment and Natural Resources and Mick Noland of the Fayetteville Public Works Commission spoke in favor of the bill. Speaking against the bill were: William G. Ross, Jr., of Greensboro; Linda Miles, Greensboro City attorney; Glenn Dunn, Town of Cary attorney; and Cindy Finan, Executive Director, N. C. Water Works Association.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, August 4, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 1299	INTERBASIN TRANSFER AMENDMENTS Senator Cochrane
HB 1415	IMPROVED SEDIMENTATION CONTROL Representative Hill

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, August 04, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1415** IMPROVE SEDIMENTATION CONTROL.
Sequential Referral: NONE
Recommended Referral: NONE

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1415*

Short Title: Improve Sedimentation Control. (Public)

Sponsors: Representatives Hill; Culp, Church, and Weatherly.

Referred to: Environment.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE SEDIMENTATION CONTROL COMMISSION AND THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-57(2) reads as rewritten:

"(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~30~~ 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion."

Section 2. G.S. 113A-65.1(d) reads as rewritten:

"(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed ~~three~~ five days."

Section 3. This act becomes effective 1 October 1998.

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MEMORANDUM

August 4, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: George F. Givens, Committee Counsel
Jeff Hudson, Committee Counsel
Rick Zechini, Committee Counsel

SUBJECT: House Bill 1415 (Improve Sedimentation Control)

House Bill 1415 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission (ERC). Its companion bill, Senate Bill 1313 (Improve Sedimentation Control), was introduced in the Senate by Senator Ellie Kinnaird. Senate Bill 1313 received a favorable report from the Senate Committee on Agriculture, Environment, and Natural Resources on July 9, 1998.

The General Assembly passed the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief.

In response to increased concerns about erosion and sedimentation in the past year, the Governor requested that the Sedimentation Control Commission (Commission) develop a plan to improve erosion and sedimentation control. The Commission has developed a plan of action that includes expanded inspections, a request for additional funding for the program, and statutory and rule changes. The plan was presented to the ERC in March. This bill contains the statutory changes requested by the Commission and recommended by the ERC.

Section 1

G.S. 113A-57(2) currently requires that exposed slopes resulting from land-disturbing activity subject to the Act be planted or otherwise provided with ground cover, devices, or other structures sufficient to restrain erosion within 30 working days of the completion of any phase of grading. Section 1 of this bill amends G.S. 113A-57(2) to require that these exposed slopes be planted, or otherwise provided for, within 15 working days or 30 calendar days of the completion of any phase of grading, whichever is shorter.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 2

Section 2 of this bill amends G.S. 113A-65.1(d) to extend the period for which a stop-work order may be issued from a period not to exceed three (3) days to a period not to exceed five (5) days.

Section 3

Section 3 of this bill makes this act effective October 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1299*

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors: Senators Cochrane; Albertson, Carpenter, East, Horton, Kinnaird, Martin of Pitt, Odom, and Phillips.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 113A is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 2. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further it is the public policy of the State that the cumulative impact of transfers from a source river basin as defined by G.S. 143-215.22G shall not degrade the water quality of the source river basin or diminish the assimilative capacity within that basin.

It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 3. G.S. 143-215.8B reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin. The definitions of G.S. 143-215.22G apply to this subdivision."

Section 4. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 5. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1,

1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of complying with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the

proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the

applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. To ensure this, it is the further public policy of the State that the cumulative impact of transfers from a source river basin shall not degrade the water quality of the source river basin or diminish the assimilative capacity within the river basin."

Section 6. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 7. By January 1, 1999, each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By January 1, 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m).

Section 8. This act becomes effective October 1, 1998, and applies to applications for certificates submitted under this section on or after that date.

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MEMORANDUM

August 4, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Rick Zechini, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1299 (Interbasin Transfer Amendments)

Chapter 483 of the 1997 Session Laws (1997 Studies Bill) authorized, and Chapter 524 of the 1997 Session Laws (Amend Interbasin Transfers) directed, the Environmental Review Commission (ERC) to study issues related to interbasin transfers. On December 22, 1997, the ERC heard a presentation by the Division of Water Resources in the Department of Environment and Natural Resources on the transfer of surface water between river basins in the State. During the May 4, 1998 meeting of the ERC, Senator Betsy Cochrane presented a legislative proposal that would amend the statutes governing interbasin transfers and water use planning. This proposal was recommended by the ERC and introduced by Senator Cochrane in the Senate as Senate Bill 1299 and by Representative Dewey Hill in the House of Representatives as House Bill 1473.

Proposed Committee Substitute

Section 1 amends the public policy statement in the water and air resources statutes to provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impact of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin. *(The bill as introduced also declares that it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not diminish the assimilative capacity within that basin. The proposed committee substitute does not include this statement. Instead, the proposed committee substitute declares that State public policy prohibits the degradation of natural resources from the cumulative impact of interbasin transfers.)*

Section 2 requires the Environmental Management Commission (Commission) to consider all transfers into and from a river basin that are required to be registered under G.S. 143-215.22H in developing and implementing basinwide water quality management plans.

Section 3 reduces the threshold volume of a withdrawal or transfer requiring registration to 100,000 gallons per day from 1,000,000 gallons per day. A person withdrawing 100,000 gallons per day or more from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more from one river basin to another must register the withdrawal or transfer with the Commission. Section 3 also makes conforming changes consistent with the reduced registration requirement.

Section 3 provides that the registration requirement does not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. *(This subsection is not included in the bill as introduced.)*

Section 4 makes various amendments to G.S. 143-215.22I (Registration of Surface Water Transfers) that:

- Direct the Commission, in determining whether to issue a certificate for a transfer, to consider the local water supply plans that affect the source major river basin to evaluate the projected future municipal water needs in the source major river basin.
- Require the Commission to consider the cumulative effects of present and projected future water transfers and consumptive water uses on the source major river basin in determining whether to issue a certificate. *(This addition is included in the proposed committee substitute but is not included in the bill as introduced.)*
- Require the preparation of an environmental assessment for any petition for a transfer certificate. The determination of whether an environmental impact statement is required shall be made in accordance with the provisions of the State Environmental Policy Act. An applicant who petitions the Commission for a certificate under this section must pay the cost of special studies necessary to comply with the State Environmental Policy Act.
- Require that a certificate must include a drought management plan that specifies how the transfer will be managed to protect the source river basin during drought conditions.
- Require that when a transfer for which a certificate was issued equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant must submit to the Department of Environment and Natural Resources (DENR) a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then the detailed plan on future water needs shall be an amendment to the local water supply plan. *(This provision is included in the proposed committee substitute but is not included in the bill as introduced).* When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant must begin implementation of the plan.
- Provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impacts of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin. *(The bill as introduced states that it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not diminish the assimilative capacity within that basin. The proposed committee substitute does not include this statement. Instead, the proposed committee substitute declares that State public policy prohibits the degradation of natural resources from the cumulative impact of interbasin transfers.)*

Section 5 repeals language that provides that units of local government are required to prepare local water supply plans only to the extent that technical assistance is available from DENR. In addition, Section 5 adds the requirement that a revised local water supply plan must include the current and anticipated reliance by the local government unit on surface water transfers.

Section 6 requires the preparation of an environmental assessment for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of the State Environmental Policy Act.

Section 7 requires each unit of local government that provides public water service or that plans to provide public water service to prepare, either individually or together with other units of local government, a local water supply plan and submit it to DENR by January 1, 1999. Section 7 also requires DENR to develop a State water supply plan by January 1, 2000. DENR must identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and must review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a ten year period from the date of review. *(This last directive is included in the proposed committee substitute but is not included in the bill as introduced.)*

Section 8 makes Section 3 of this act effective March 1, 2000. A person who is required by G.S. 143-215.22H(a), as amended by Section 3 of this act, to register a water withdrawal and transfer on March 1, 2000 must provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawal and transfers occurring during the 1999 calendar year. All other sections of this act become effective October 1, 1998, and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 8/4/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessica Luginbuhl	Brooks, Pierce et. al.
Bill Holman	DENR
Linda Miles	City of Greensboro
BILL ROSS	" / Brooks Pierce
Cam Cover	BPMHL
Glenn Dunn	Poyner & Spruill L.L.P.
Lucinda Pullen	Attorney
Francis M. Nealy III	DENR - DLR - LQS
Charles H. Jordan	ENR/DLR
Mike Carpenter	NCCBA
TOM BEAN	NC Wildlife Federation

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K Rogers	DENR
Amos Dawson	Maupin Taylor & Ellis for Fayetteville PWC
Mick Noland	Fayetteville Public Works Comm.
Joe McClees	N.C. Septic Tank Assoc
Doug Lassiter	N.C. " " "
John Morris	NC Div. of Water Resources
Tommy Stevens	DWQ
Cindy Finan	NC amer. Waterworks/Water Envirn. Assoc.
Tom Fransen	NC DWR
Tony Young	NC DWR
Mary Bernstein	NC DOJ
Roger Bone	Bone House
Lyndal Cooke	CSX

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mason Mansfield	Poyner + Spruill
Alicia Irigoyen	Poyner & Spruill
Natalie Haskins	Charlotte Chamber
Julia Wilpott	NC Farm Bureau
David Meredith	NC League

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

August 6, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, August 6, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were discussed and all distributed material as well as copies of the bills are attached:

SENATE BILL 1299 - INTERBASIN TRANSFER AMENDMENTS - Senator Cochrane, sponsor, was recognized to explain the bill. There was a proposed committee substitute and Senator Odom moved for adoption of the PCS for discussion purposes. Motion carried. George Givens of staff read an amendment that had been submitted by Senator Cochrane. Senator Cochrane moved that the amendment be adopted and incorporated into the PCS. Motion carried. Bill Ross, attorney for the City of Greensboro; Amos Dawson, attorney representing the City of Fayetteville Public Works Commission; and Cindy Finan, representing the North Carolina American Water Works all spoke in favor of the amendment. Questions from committee members were answered by Coleen Sullins of the Division of Water Quality. Senator Gulley sent forth an amendment and moved for its adoption. Motion carried. Senator Cochrane sent forth a second amendment and moved for its adoption. Motion carried. Then Senator Gulley sent forth another amendment and moved for its adoption. Senator Cochrane said she opposed this amendment as did Senator Wellons. After much discussion, the motion failed. All three of the adopted amendments were incorporated into the proposed committee substitute. Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

HOUSE BILL 1462 - CERTAIN SEPTIC TANK DEVICES - Representative Culp, sponsor. This bill had been reported out of committee on July 21, 1998, with a favorable report as to proposed committee substitute and had been re-referred to our committee because there were some concerns regarding it. Senator Albertson had appointed a subcommittee to work out these concerns as follows: Senator Wellons, chair; Senator Odom; Senator Cochrane; and Senator Albertson. Senator Wellons, chair of the subcommittee, said there was a revised proposed committee substitute before the committee and moved for its adoption for discussion purposes. Motion carried. Speaking on the revised proposed committee substitute were Malcolm Blalock of DEHR and Steve Steinbeck, DEHR, On-Site Waste Water Services. After discussion, Senator

Senate Agriculture/Environment/Natural Resources
Minutes
August 6, 1998

McDaniel moved that the revised proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, August 6, 1998
Room 1124 - LB

AGENDA

SB 1299 — INTERBASIN TRANSFER AMENDMENTS
Senator Cochrane

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Monday, August 10, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

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

S.B. **1299** INTERBASIN TRANSFER AMENDMENTS

Draft Number:	PCS3650
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	NONE

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, August 06, 1998

SENATOR ALBERTSON,
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) **1462** CERTAIN SEPTIC TANK DEVICES REQUIRED

Draft Number:	PCS3170
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 1299*
Proposed Committee Substitute S1299-PCS3650-RT005

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the

intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further

indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(l).

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay

the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water ~~services~~ service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether

an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H made by Section 3 of this act shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1299*
Proposed Committee Substitute S1299-PCS3646-RT004

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to

confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S.

143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required by G.S. 143-215.22H(a), as amended by Section 3 of this act, to register a water withdrawal and transfer on 1 March 2000 shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawal and transfer occurring during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1299*

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors: Senators Cochrane; Albertson, Carpenter, East, Horton, Kinnaird, Martin of Pitt, Odom, and Phillips.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 113A is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 2. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further it is the public policy of the State that the cumulative impact of transfers from a source river basin as defined by G.S. 143-215.22G shall not degrade the water quality of the source river basin or diminish the assimilative capacity within that basin.

It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 3. G.S. 143-215.8B reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin. The definitions of G.S. 143-215.22G apply to this subdivision."

Section 4. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 5. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1,

1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of complying with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the

proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the

applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. To ensure this, it is the further public policy of the State that the cumulative impact of transfers from a source river basin shall not degrade the water quality of the source river basin or diminish the assimilative capacity within the river basin."

Section 6. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 7. By January 1, 1999, each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By January 1, 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m).

Section 8. This act becomes effective October 1, 1998, and applies to applications for certificates submitted under this section on or after that date.

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MEMORANDUM

August 6, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Rick Zechini, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1299 (Interbasin Transfer Amendments)

Chapter 483 of the 1997 Session Laws (1997 Studies Bill) authorized, and Chapter 524 of the 1997 Session Laws (Amend Interbasin Transfers) directed, the Environmental Review Commission (ERC) to study issues related to interbasin transfers. On December 22, 1997, the ERC heard a presentation by the Division of Water Resources in the Department of Environment and Natural Resources on the transfer of surface water between river basins in the State. During the May 4, 1998 meeting of the ERC, Senator Betsy Cochrane presented a legislative proposal that would amend the statutes governing interbasin transfers and water use planning. This proposal was recommended by the ERC and introduced by Senator Cochrane in the Senate as Senate Bill 1299 and by Representative Dewey Hill in the House of Representatives as House Bill 1473.

Proposed Committee Substitute

Section 1 amends the public policy statement in the water and air resources statutes to provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impact of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin. *(The bill as introduced also declares that it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not diminish the assimilative capacity within that basin. The proposed committee substitute does not include this statement. Instead, the proposed committee substitute declares that State public policy prohibits the degradation of natural resources from the cumulative impact of interbasin transfers.)*

Section 2 requires the Environmental Management Commission (Commission) to consider all transfers into and from a river basin that are required to be registered under G.S. 143-215.22H in developing and implementing basinwide water quality management plans.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 3 reduces the threshold volume of a withdrawal or transfer requiring registration to 100,000 gallons per day from 1,000,000 gallons per day. A person withdrawing 100,000 gallons per day or more from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more from one river basin to another must register the withdrawal or transfer with the Commission. Section 3 also makes conforming changes consistent with the reduced registration requirement.

Section 3 provides that the registration requirement does not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. *(This subsection is not included in the bill as introduced.)*

Section 4 makes various amendments to G.S. 143-215.22I (Registration of Surface Water Transfers) that:

- Direct the Commission, in determining whether to issue a certificate for a transfer, to consider the local water supply plans that affect the source major river basin to evaluate the projected future municipal water needs in the source major river basin.
- Require the Commission to consider the cumulative effects of present and projected future water transfers and consumptive water uses on the source major river basin in determining whether to issue a certificate. *(This addition is included in the proposed committee substitute but is not included in the bill as introduced.)*
- Require the preparation of an environmental assessment for any petition for a transfer certificate. The determination of whether an environmental impact statement is required shall be made in accordance with the provisions of the State Environmental Policy Act. An applicant who petitions the Commission for a certificate under this section must pay the cost of special studies necessary to comply with the State Environmental Policy Act.
- Require that a certificate must include a drought management plan that specifies how the transfer will be managed to protect the source river basin during drought conditions.
- Require that when a transfer for which a certificate was issued equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant must submit to the Department of Environment and Natural Resources (DENR) a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then the detailed plan on future water needs shall be an amendment to the local water supply plan. *(This provision is included in the proposed committee substitute but is not included in the bill as introduced).* When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant must begin implementation of the plan.
- Provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impacts of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin. *(The bill as introduced states that it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not diminish the assimilative capacity within that basin. The proposed committee substitute does not include this statement. Instead, the proposed committee substitute declares that State public policy prohibits the degradation of natural resources from the cumulative impact of interbasin transfers.)*

Section 5 repeals language that provides that units of local government are required to prepare local water supply plans only to the extent that technical assistance is available from DENR. In addition, Section 5 adds the requirement that a revised local water supply plan must include the current and anticipated reliance by the local government unit on surface water transfers.

Section 6 requires the preparation of an environmental assessment for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of the State Environmental Policy Act.

Section 7 requires each unit of local government that provides public water service or that plans to provide public water service to prepare, either individually or together with other units of local government, a local water supply plan and submit it to DENR by January 1, 1999. Section 7 also requires DENR to develop a State water supply plan by January 1, 2000. DENR must identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and must review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a ten year period from the date of review. *(This last directive is included in the proposed committee substitute but is not included in the bill as introduced.)*

Section 8 makes Section 3 of this act effective March 1, 2000. A person who is required by G.S. 143-215.22H(a), as amended by Section 3 of this act, to register a water withdrawal and transfer on March 1, 2000 must provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawal and transfers occurring during the 1999 calendar year. All other sections of this act become effective October 1, 1998, and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

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MEMORANDUM

August 4, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Rick Zechini, Committee Counsel
Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for Senate Bill 1299 (Interbasin Transfer Amendments)

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Proposed Committee Substitute

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Section 2 requires the Environmental Management Commission (Commission) to consider all transfers into and from a river basin that are required to be registered under G.S. 143-215.22H in developing and implementing basinwide water quality management plans.

Section 3 reduces the threshold volume of a withdrawal or transfer requiring registration to 100,000 gallons per day from 1,000,000 gallons per day. A person withdrawing 100,000 gallons per day or more from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more from one river basin to another must register the withdrawal or transfer with the Commission. Section 3 also makes conforming changes consistent with the reduced registration requirement.

Section 3 provides that the registration requirement does not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. *(This subsection is not included in the bill as introduced.)*

Section 4 makes various amendments to G.S. 143-215.22I (Registration of Surface Water Transfers) that:

- Direct the Commission, in determining whether to issue a certificate for a transfer, to consider the local water supply plans that affect the source major river basin to evaluate the projected future municipal water needs in the source major river basin.
- Require the Commission to consider the cumulative effects of present and projected future water transfers and consumptive water uses on the source major river basin in determining whether to issue a certificate. *(This addition is included in the proposed committee substitute but is not included in the bill as introduced.)*
- Require the preparation of an environmental assessment for any petition for a transfer certificate. The determination of whether an environmental impact statement is required shall be made in accordance with the provisions of the State Environmental Policy Act. An applicant who petitions the Commission for a certificate under this section must pay the cost of special studies necessary to comply with the State Environmental Policy Act.
- Require that a certificate must include a drought management plan that specifies how the transfer will be managed to protect the source river basin during drought conditions.
- Require that when a transfer for which a certificate was issued equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant must submit to the Department of Environment and Natural Resources (DENR) a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then the detailed plan on future water needs shall be an amendment to the local water supply plan. *(This provision is included in the proposed committee substitute but is not included in the bill as introduced).* When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant must begin implementation of the plan.
- Provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impacts of transfers from a source river basin shall not degrade the water quality or natural resources of the source river basin. *(The bill as introduced states that it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not diminish the assimilative capacity within that basin. The proposed committee substitute does not include this statement. Instead, the proposed committee substitute declares that State public policy prohibits the degradation of natural resources from the cumulative impact of interbasin transfers.)*

Section 5 repeals language that provides that units of local government are required to prepare local water supply plans only to the extent that technical assistance is available from DENR. In addition, Section 5 adds the requirement that a revised local water supply plan must include the current and anticipated reliance by the local government unit on surface water transfers.

Section 6 requires the preparation of an environmental assessment for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of the State Environmental Policy Act.

Section 7 requires each unit of local government that provides public water service or that plans to provide public water service to prepare, either individually or together with other units of local government, a local water supply plan and submit it to DENR by January 1, 1999. Section 7 also requires DENR to develop a State water supply plan by January 1, 2000. DENR must identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and must review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a ten year period from the date of review. *(This last directive is included in the proposed committee substitute but is not included in the bill as introduced.)*

Section 8 makes Section 3 of this act effective March 1, 2000. A person who is required by G.S. 143-215.22H(a), as amended by Section 3 of this act, to register a water withdrawal and transfer on March 1, 2000 must provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawal and transfers occurring during the 1999 calendar year. All other sections of this act become effective October 1, 1998, and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

Summary of Interbasin Transfers[1]

Water System	Transfer Amount[2] (MGD)	Source Basin	Receiving Basin
Permitted Transfers[3]			
Cary/Apex	16.0	Haw	Neuse
Piedmont Triad W.A.	30.5	Deep	Haw/Yadkin
Registered Transfers[4]			
Albemarle	7.11	Yadkin	Rocky
Asheboro	4.65	Uwharrie	Deep
Benson	0.97	South	Neuse
Bessemer City	2.16	South Fork Catawba	Catawba
Burlington Industries	3.75	Catawba	Rocky
Charlotte-Mecklenburg	2.71	Catawba	Rocky
Conover	1.2	Catawba	South Fork Catawba
Davidson Water	1.4	Yadkin	Uwharrie
Durham	17.1	Neuse	Haw
Gastonia	10.3	South Fork Catawba	Catawba
Hickory	3.6	Catawba	South Fork Catawba
High Point	3.47	Deep	Yadkin
Kannapolis	7.92	South Yadkin	Rocky
Kerr Lake Regional W.S.	2.35	Roanoke	Tar
Long View	1.25	Catawba	South Fork Catawba
Lower Cape Fear WSA	1.6	Cape Fear	Shallotte
Montgomery County	0.93	Yadkin	Deep
Mooresville	2.7	Catawba	Rocky
Morganton	1.3	South Fork Catawba	Catawba
Sanford	3.1	Cape Fear	Deep
Union Co.	2.6	Rocky	Catawba
Zebulon	0.74	Neuse	Contentnea Crk

[1]The Division's screening analysis has identified 133 potential interbasin transfers; however, the majority of these transfers fall below the 1.0 MGD registration threshold and the Division does not have sufficient information to determine the amount of the transfers. The 1997 Local Water Supply Plan update will provide additional information needed to identify and quantify interbasin transfers, as well as an updated projection to 2020.

[2]Transfer amounts are average daily amounts reported in 1992 Local Water Supply Plans.

[3]Permitted under the old G.S. 153A-285 and 162A-7, which have been replaced with G.S. 143-215.22I.

[4]Transfers of 1 MGD or greater are required to be registered with the State.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1462*
Committee Substitute Favorable 6/25/98
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/98
Proposed Committee Substitute H1462-PCS3170-RT004

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT CERTAIN NEW SEPTIC TANK SYSTEMS INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or

the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

(3) Be designed and constructed to allow for routine maintenance.

(4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
(3) Prevent water entry.
(4) Come to within six inches of the finished grade.
(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335, as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 December 1998. Temporary rules adopted under this section become effective on 1 January 1999. The requirements of G.S. 130A-335, as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335 and this section shall apply to any septic tank system that is designed to treat 3,000 gallons per day or less of sewage for which a permit is issued on or after 1 January 1999.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1462*
Committee Substitute Favorable 6/25/98

Short Title: Certain Septic Tank Devices Required. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT EACH NEW SEPTIC TANK SYSTEM INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, TO REQUIRE THE COMMISSION FOR HEALTH SERVICES TO DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND TO ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The rules shall require, for each septic tank system, the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The specifications for the effluent filter and access device shall meet but not exceed the requirements of G.S. 130A-335.1. The Department and local health

departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-335.1. Effluent filters and access devices for septic tank systems.**

(a) The manufacturer of each septic tank to be installed in this State shall provide an effluent filter that meets the requirements of G.S. 130A-335(f), this section, and rules adopted by the Commission. The Commission shall require that a qualified expert who is independent of any manufacturer of effluent filters or septic tanks establish that the effluent filter meets the requirements of this section and rules adopted under this section. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. The effluent filter shall:

(1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.

(2) Reduce the total suspended solids that enter the drainfield by a minimum of twenty-five percent (25%) of the total suspended solids that would enter the drainfield in the absence of the effluent filter.

(3) Be designed to allow for routine maintenance.

(4) Under normally anticipated use, not require maintenance more frequently than once in any three-year period.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

(1) Be of sufficient size to facilitate inspection and service.

(2) Be designed and constructed to meet a minimum uniform load of 150 pounds per square foot without damage to the septic tank, riser, or cover.

(3) Prevent water entry.

(4) Come to within six inches of the final grade when the surface has been finally landscaped.

(5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335(f), as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 November 1998. Temporary rules adopted under this section shall become effective on 1 December 1998. The effluent filters and access devices required by G.S. 130A-335(f), as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335(f) and this section shall apply to any new septic tank system for which a permit is issued on or after 1 December 1998.

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

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Memorandum

August 6, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Proposed Committee Substitute for House Bill 1462, 3rd Edition (Certain Septic Tank Devices Required)

House Bill 1462 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. The companion bill to House Bill 1462, Senate Bill 1303 (Certain Septic Tank Devices Required), was introduced in the Senate by Senator Fountain Odom.

Section 15.16(c) of S.L. 1997-443 (The 1997 Budget Bill) directed the Environmental Review Commission (ERC) to study the development of best management practices for the installation of new septic tank systems and for the replacement or improvement of existing septic tank systems. The ERC heard presentations on best management practices for septic tank systems on November 24, 1997 and April 13, 1998. Based on these presentations, the ERC recommended a legislative proposal that requires certain devices for new septic tank systems. This legislative proposal was introduced in the House of Representatives by Representative Culp as House Bill 1462 (Certain Septic Tank Devices Required).

Proposed Committee Substitute for House Bill 1462, 3rd Edition

The Proposed Committee Substitute for House Bill 1462, 3rd Edition (3rd Edition PCS) differs from the Proposed Committee Substitute for House Bill 1462, 2nd Edition (2nd Edition PCS), which received a favorable report in this Committee on July 23, 1998, in only one respect. The 3rd Edition PCS delays by one month the dates found in the 2nd Edition PCS regarding the adoption and effect of temporary rules and the effective date of the filter/access device requirement.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 1 directs the Commission to adopt rules that require each septic tank to employ an effluent filter to reduce the total suspended solids entering the drainfield as well as an access device to facilitate service maintenance.

Section 2 establishes the requirements and standards for the effluent filters and access devices required by this act.

Section 2(a) requires that installation of an effluent filter be done in accordance with specifications provided by the manufacturer of the effluent filter. This section also directs the Commission to require that an independent, third-party expert establish that a particular effluent filter meets the requirements established by rules adopted under this section and that the effluent filter:

- Is made of noncorrosive materials
- Reduces the total suspended solids that enter a drain field by at least 25%
- Is designed to allow routine maintenance
- Requires maintenance only once every three years when used under normally anticipated conditions

Section 2(b) requires that an access device provide access to each compartment of a septic tank for inspection and maintenance and that it include an appropriate cover. This section also requires that an access device:

- Be large enough to facilitate inspection and service
- Be designed and constructed to meet at least a 150 pound per square foot load without damage to the septic tank, riser, or cover
- Prevent water entry
- Come within six inches of the final grade of the landscaped surface
- Be visibly marked for ready location

Section 3 directs the Commission to adopt temporary rules to implement standards for effluent filters and access devices no later than December 1, 1998. These temporary rules become effective on January 1, 1999. This section also provides that the effluent filters and access devices required by this act apply only to new septic tanks for which a permit is issued on or after January 1, 1999.

Section 4 makes this act effective when it becomes law.

VISITOR REGISTRATION SHEET

Thursday

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 8/6/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Malcolm Bullock	DEH / DENR
STEVE STEINBECK	DEH / DENR
Richard Rogers	DENR
David Knight	NC Sierra Club
Laura DeVane	DENR
Joe McClees	N.C. Septic Tanks
Doug Lassiter	" " "
Jim Blose	DENR/DWQ
Colon Sullins	DENR/DWQ
Tommy Stevens	DENR/DWQ
Mike Carpenter	NCDTSA
Julian Philpott	NC Farm Bureau

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 8/6/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc - NCPC
Lucius Pullen	Attorney
Laura Hartsell	NCLL
Crissy Parker	Bone & Associates
Mark Brantley	NC DOT
Cindy Finan	NC amer. Water Works/Water Environ. Assn.
John Morris	Div water Res.
Tom Fransen	NC DWR
Tony Young	NC DWR
Alicia Gregory	Poyner & Spruill
Glenn Dunn	Poyner & Spruill
Linda Mc	Ag of Inmates

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 8/12/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mason Mumbower	Poyner & Spruill
Cam Gore	BPMHL
Bill Ross	City of Greensboro
Kiki Dunton	BPMHL
Amos Dawson	Martin Taylor & Ellis for City of Fayetteville PWC

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

August 18, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, August 18, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were twelve committee members present.

Senator Cochrane introduced her guest, Anthony Coleman, who is a member of the British Parliament.

The following bills were discussed and all distributed material as well as copies of the bills are attached:

SENATE BILL 158 - DISSOLVE SANITARY DISTRICT - Senator Odom, sponsor. This bill had been sent to us for concurrence of House Committee Substitute No. 2., and Senator Odom moved that the committee concur on the bill. Motion passed.

SENATE BILL 1285 - EXEMPT TRANSP. AGRIC. PRODUCTS - Senator Albertson, sponsor, asked Senator Wellons to take over as chairman of committee so that he could explain the bill. There was a proposed committee substitute and Senator Albertson moved that the PCS be adopted for discussion purposes. Motion carried. George Givens of staff explained the PCS. After discussion of the bill, Senator Albertson moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

HOUSE BILL 577 - FORESTER REGISTRATION - Representative Weatherly, sponsor. There was a proposed committee substitute, and Senator Wellons moved that it be adopted for discussion purposes. Motion carried. Senator Albertson, chairman, had previously sent this bill to a subcommittee chaired by Senator Wellons who explained the PCS for Representative Weatherly who said he was in agreement with the PCS. Senator Wellons moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried and the bill was sequentially referred to Finance.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, August 18, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE AS TO CONCURRENCE

S.B.(HCS # 2) **138** DISSOLVE SANITARY DIST.
Sequential Referral: NONE
Recommended Referral: NONE

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

S.B. **1285** TRANS. AG. PRODUCTS EXEMPT
Draft Number: PCS3652
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) **577** FORESTER REGISTRATION
Draft Number: PCS2415
Sequential Referral: FINANCE
Recommended Referral: NONE
Long Title Amended: NO

TOTAL REPORTED: 3

Committee Clerk Comment:

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, August 18, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 138	DISSOLVE SANITARY DISTRICT Senator Odom
SB 1285	EXEMPT TRANSP AGRIC. PRODUCTS Senator Albertson
HB 577	FORESTER REGISTRATION Representative Weatherly

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 138
House Committee Substitute Favorable 7/15/98
Corrected Copy 7/17/98
House Committee Substitute #2 Favorable 7/28/98

Short Title: Dissolve Sanitary Dist. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.**

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission,

the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

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

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Memorandum

August 18, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Jeff Hudson, Committee Counsel

SUBJECT: Senate Bill 138 (Dissolve Sanitary District), 4th Edition

Senate Bill 138 was recommended to the 1997 Regular Session of the 1997 General Assembly by the Environmental Review Commission and introduced in the Senate by Senator Fountain Odom. The companion bill to Senate Bill 138, House Bill 189, was introduced in the House of Representatives by Representative Arlie Culp. The bills as introduced amend the North Carolina Drinking Water Act so that it conforms to federal law. These conforming changes became law with the enactment of House Bill 189 during the 1997 Regular Session.

A house committee substitute for Senate Bill 138 offered by Representatives Robert Brawley and John Rayfield and approved by the House Committee on Environment deleted the original provisions of the bill and replaced them with provisions authorizing certain privately owned community water systems to apply for loans and grants from the Drinking Water Treatment Revolving Loan Fund and establishing an alternative procedure for the dissolution of certain sanitary districts. A second house committee substitute approved by the House Committee on Finance removed the provisions relating to privately owned water systems.

This second house committee substitute approved by the House Committee on Finance became Senate Bill 138, 4th Edition, which was received by the Senate for concurrence and referred to this committee. Senate Bill 138, 4th Edition now contains only the provision establishing an alternative procedure for dissolution of certain sanitary districts. Two statutory methods for dissolving certain sanitary districts currently exist.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Senate Bill 138 (Dissolve Sanitary District), 4th Edition

Section 1 establishes an alternative procedure for the dissolution of certain sanitary districts. The board of a sanitary district, by unanimous vote, may petition the board of commissioners of the county in which the district is located to dissolve the district when the district:

- Is located entirely within one county
- Has no outstanding indebtedness
- At the time of its creation, was not located entirely within or coterminous with the corporate limits of a city or town
- Has not provided any water or sewer service for at least five years
- Did not levy any ad valorem tax in the current year
- Has been entirely located within or coterminous with the corporate limits of a city or town for at least five years
- At the time of annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district

Upon receipt of a petition, the board of commissioners must notify the Department of Health and Human Services and the governing body of the city or town within which the petitioning district lies. If the Commission for Health Services (Commission), the county board of commissioners, and the governing body of the city or town agree to the petition, the Commission will dissolve the district. Matters related to the sanitary district's collection of taxes, property, and causes of action will pass to the city or town. This dissolution procedure is an alternative to that established in G.S. 130A-73. Any sanitary district to which both sections apply may be dissolved under either section.

Section 2 makes this act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1285*
Proposed Committee Substitute S1285-PCS3652-RT001

Short Title: Trans. Ag. Products Exempt/Temp. Rule Auth. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE TRANSPORTATION OF CERTAIN AGRICULTURAL PRODUCTS FROM VARIOUS REQUIREMENTS IN CONFORMITY WITH FEDERAL REGULATIONS AND TO AUTHORIZE THE SOIL AND WATER CONSERVATION COMMISSION TO ADOPT TEMPORARY RULES TO IMPLEMENT THE CONSERVATION RESERVE ENHANCEMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-377 reads as rewritten:

"**§ 20-377. General powers of ~~Division.~~ Division; agricultural exemption.**

(a) The Division shall have and exercise such general power and authority to supervise and control the motor carriers of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.

(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR. The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from

the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 2. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Soil and Water Conservation Commission may adopt temporary rules to implement the Conservation Reserve Enhancement Program until all rules necessary to implement the Conservation Reserve Enhancement Program become effective as either temporary rules or permanent rules.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1285*

Short Title: Trans. Ag. Products Exempt. (Public)

Sponsors: Senators Albertson; Horton, Ledbetter, Odom, Plyler, Warren, and Weinstein.

Referred to: Transportation.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE TRANSPORTATION OF CERTAIN AGRICULTURAL PRODUCTS FROM VARIOUS REQUIREMENTS IN CONFORMITY WITH FEDERAL REGULATIONS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-377 reads as rewritten:

"**§ 20-377. General powers of ~~Division.~~ Division; agricultural exemption.**

(a) The Division shall have and exercise such general power and authority to supervise and control the motor carriers of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.

(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. The citations to the Code of Federal Regulations (CFR) refer to the 1 October 1997 Edition of the CFR. The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5."

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

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Memorandum

August 18, 1998

To: Senate Committee on Agriculture, Environment and Natural Resources

From: Hannah Holm, Research Assistant

Subject: Proposed Committee Substitute for Senate Bill 1285 (Trans. Ag. Products Exempt/ Temp. Rule Auth.)

Senate Bill 1285 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. Its companion bill, House Bill 1442 (Trans. Ag. Products Exempt), was introduced in the House by Representative Mitchell.

As introduced, Senate Bill 1285 exempts the transport of agricultural products over local roads between fields of the same farm from federal regulations governing the transport of hazardous materials. Class 2 materials (flammable, compressed, and poisonous gasses) are excluded from the exemption. Federal regulations permit this exemption if the exemption is authorized by a State statute or regulation in effect by October 1, 1998.

The **Proposed Committee Substitute** adds a provision that exempts the transport of agricultural products to and from a farm within 150 miles of the farm from specific regulations requiring emergency response information and training for handlers of hazardous materials. Federal regulations permit this exemption for limited quantities of ammonium nitrate fertilizer and other products in packaging specifically authorized for the transport of agricultural products by a State statute or regulation in effect by July 1, 1998. In addition, all parties with any responsibility for transporting the product must be advised of the applicable federal regulations. For both exemptions, the products must be transported by a farmer operating as an intrastate private motor carrier. The **Proposed Committee Substitute** also adds a provision authorizing the Soil and Water Conservation Commission to adopt temporary rules to implement the Conservation Reserve Enhancement Program until other rules necessary to implement the program become effective.

Proposed Committee Substitute for Senate Bill 1285

Section 1 states that the definitions in the Code of Federal Regulations regarding hazardous materials apply to this section. This section provides that the transport of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from federal hazardous materials regulations. This section also provides that the transport of agricultural materials to and from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from specific federal hazardous material regulations on 1) providing and maintaining emergency response information and 2) training for handlers of hazardous materials, as long as each vehicle carries less than 16,094 pounds of ammonium nitrate fertilizer and less than 502 gallons (liquid) or 5,070 pounds (solid) of any other agricultural product, as provided for by federal regulations.

Section 2 authorizes the Soil and Water Conservation Commission to adopt temporary rules to implement the Conservation Reserve Enhancement Program until all rules necessary to implement the program become effective as either temporary or permanent rules.

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 577
Committee Substitute Favorable 7/9/97
Proposed Senate Committee Substitute H577-PCS2415-RF017

Short Title: Forester Registration. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89B of the General Statutes reads as rewritten:

"Chapter 89B.

"Foresters.

"**§ 89B-1. General provisions.**

(a) No person ~~shall, in connection with his name or otherwise, assume,~~ shall use ~~or advertise any title or description tending to~~ the designation 'forester', 'registered forester', or any other descriptive terms that include the words 'forester' or 'registered forester' and that directly convey ~~convey, directly or indirectly, the impression~~ that ~~he~~ the person is a ~~registered~~ forester without first having been registered ~~as a registered forester as hereinafter provided.~~ under this Chapter.

(b) ~~It is the intention of this~~ This Chapter ~~to benefit and protect~~ benefits and protects the public by improving the standards ~~relative to~~ for the practice of professional forestry in North Carolina.

"**§ 89B-2. Definitions.**

As used in this Chapter:

(1) 'Board' ~~shall mean~~ means the State Board of Registration for Foresters, provided for by this Chapter.

(2) 'Forester' means a person who by reason of ~~his~~ special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined.~~ forestry.

(2a) 'Forestry' means the professional practice embracing the science, business, and the art of creating, conserving, and managing forests and forestlands for the sustained use and enjoyment of their resources, material, or other forest produce.

(3) ~~"Practicing"~~ 'Practice of forestry' means ~~giving~~ rendering professional forestry services, including but not limited to, consultation, investigation, evaluation, ~~education,~~ planning, or ~~responsible supervision of any~~ other forestry activities requiring knowledge, ~~and training in and experience of~~ training, and experience in forestry principles and techniques.

(4) 'Registered forester' means a person who has been registered pursuant to this Chapter.

(5) 'Consulting forester' means a ~~person~~ registered forester who:

~~a. Is registered by the State Board of Registration for Foresters;~~

~~b. Is a technically educated professional forester who is a graduate of a forestry curriculum of a college or university and who holds a bachelor's or higher degree in forestry; or has shown equivalent knowledge by passing the written examination administered by the State Board of Registration for Foresters as provided in this Chapter;~~

~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~

~~d.~~ a. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;

~~e.~~ b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and

~~f.~~ c. Has filed annually an affidavit with the ~~State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).

(6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"§ 89B-3. State Board of Registration for Foresters; appointment of members; terms.

(a) A State Board of Registration for Foresters is created to administer the provisions of this Chapter. The Board shall have five members as follows:

(1) Four duly practicing registered foresters, at least three of whom hold ~~at a minimum a bachelor's~~ a bachelors or higher degree from an accredited forestry school, and

(2) One public member.

Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

"**§ 89B-4. Compensation and expenses of Board members.**

Each member of the Board shall receive per diem and allowances as provided ~~with respect to occupational licensing boards~~ by G.S. 93B-5.

"**§ 89B-5. Organization and meetings of the Board.**

The Board shall meet ~~on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings~~ at least twice each year. In addition, special ~~Special~~ meetings may be held ~~at such time and place as~~ in accordance with the ~~bylaws~~ rules of the ~~Board may provide.~~ Board.

"**§ 89B-6. Powers of the Board.**

The Board may ~~make all reasonable and necessary~~ adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter.

"**§ 89B-7. Receipts and disbursements.**

The secretary of the Board shall receive and account for all moneys derived under ~~the provision of~~ this Chapter, and shall keep ~~such~~ these moneys in a separate fund ~~to be~~ known as the 'Registered Foresters' Fund.' Moneys in the ~~aforesaid fund~~ Fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in ~~such sum as the Board may determine, the premium of which shall be regarded as~~ an amount determined by the Board. The premium for the surety bond is a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of ~~such~~ these assistants shall be paid out of the Registered Foresters' Fund.

"**§ 89B-8. Records and reports.**

The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; the applicant's place of business; ~~his~~ the applicant's educational and other qualifications; whether or not examination was required; whether the application was rejected or registration was granted; the date of action by the Board; and other information ~~as may be~~ deemed necessary by the Board. ~~Annually on~~ Each July 1 the Board shall submit to the Governor a report of its transactions of the preceding year.

"§ 89B-9. General requirements for registration.

(a) ~~Applicants~~ An applicant for registration shall be registered upon satisfactory ~~showing~~ proof to the Board that the ~~applicant:~~ applicant is of good moral character and meets one of the following requirements:

~~(1) Is of good moral character, and~~

~~(2) Has either:~~

(1)~~a.~~ ~~Graduated~~ Graduation with a ~~bachelor's~~ bachelors or higher degree in a forestry curriculum from a school or college of forestry approved by the ~~Board~~ Board, passage of a comprehensive written examination, and ~~has had~~ the completion of two or more years' experience in ~~forestry; or~~ forestry.

(2)~~b.~~ ~~Passed~~ Passage of a comprehensive written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the ~~Board,~~ Board and ~~has a record~~ the completion of ~~five~~ six or more years of active practice in forestry work ~~of a character satisfactory to the Board; provided that five or more years shall be~~ immediately prior to the ~~application; or~~ application. The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.

(3)~~c.~~ ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.~~ Registration in good standing as a registered forester with the Board as of January 1, 1999.

(4) Practice of urban forestry for six years immediately prior to January 1, 1999, if the applicant meets all of the following conditions:

a. The applicant is a North Carolina resident at the time of filing the application.

b. The applicant practiced under the title 'urban forester' during the six-year period.

c. The applicant, prior to June 30, 1999, applies to the Board for registration and submits an affidavit under oath to the Board showing experience and education equivalent to that of a forester, as determined by the Board.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(b1) The Board may issue a forester-in-training certificate to an applicant who has completed the educational requirements under subdivision (a)(1) of this section.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A ~~person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially the same registration for North Carolina foresters who are registered under this Chapter.

(e) A nonresident of North Carolina may use the term 'registered forester' or other titles otherwise prohibited by this Chapter in North Carolina without becoming registered under this Chapter ~~provided that he is~~ if registered in another state which will reciprocate with the provision of this Chapter.

"**§ 89B-10. Application and registration fees.**

(a) Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be ~~fifteen dollars ($15.00),~~ in an amount determined by the Board, not to exceed fifty dollars ($50.00), which shall accompany the application. An additional ~~twenty dollars ($20.00)~~ fee, not to exceed forty dollars ($40.00), shall be paid upon

issuance of the certificate of registration. ~~Should the~~ An applicant ~~fail or refuse to~~ that does not remit the certificate fee within 30 days after being notified ~~in the usual manner that the applicant has successfully qualified, he~~ of qualification forfeits the right to have the certificate ~~so issued and said~~ issued, and the applicant may be required again to submit an original application ~~fee therefor.~~ fee. ~~Should~~ If the Board ~~deny the issuance of~~ denies a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board.

(b) It is unlawful for any person to provide false or forged information to the Board or a member of the Board in obtaining a certificate of registration.

"§ 89B-11. Expiration and ~~renewals.~~ renewals; continuing education.

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. ~~It shall be the duty of the~~ The secretary of the Board ~~to notify, at his last registered address,~~ shall notify every person registered under this ~~Chapter~~ Chapter, at the person's last registered address, of the date of the expiration of ~~his~~ registration and the amount of fee ~~which shall be~~ required for its renewal for one year. ~~Such~~ The notices shall be mailed at least 30 days ~~in advance of~~ prior to the expiration date of ~~such~~ the registrations. The annual renewal fee for certificates shall be ~~twenty dollars ($20.00).~~ in an amount established by the Board, not to exceed fifty dollars ($50.00). The fee for issuance of replacement certificates of registration shall be five dollars ($5.00).

Any registration which has expired may be renewed by paying ~~a fee of twenty dollars ($20.00)~~ the registration fee plus ~~one dollar ($1.00)~~ one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed ~~twenty dollars ($20.00).~~ an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 hours per year, as a condition of renewal.

"§ 89B-12. Examinations.

When written examinations are required, they shall be held at ~~such~~ the time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination ~~at the expiration of~~ after six months and will be reexamined with payment of an additional fee ~~of fifteen dollars ($15.00).~~ established by the Board, not to exceed fifty dollars ($50.00). Subsequent examinations will be granted upon payment of ~~a fee of fifteen dollars ($15.00)~~ this fee for each examination. The Board may limit an applicant to three examinations.

"§ 89B-13. Revocations and reissuance of registration.

The Board ~~shall have the power to~~ may revoke or suspend the certificate of registration of any registrant who ~~is found, by the Board, to be guilty of~~ it finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of ~~forestry,~~ forestry or ~~who is found by the Board to have~~ has demonstrated incompetence as a practicing forester. The Board ~~is empowered to~~ may designate a person or persons to investigate and report to it upon any charges of fraud, deceit,

gross negligence, incompetency or other misconduct by a registrant in the practice of forestry. ~~in connection with any forestry practice against any registrant that may come to its attention.~~

Any person may prefer charges against ~~any~~ a registrant. ~~Such~~ The charges shall be in ~~writing and~~ writing, ~~shall be~~ sworn to by the person making ~~them and shall be~~ them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"**§ 89B-14. Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.**

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board~~ Board. ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

"**§ 89B-15. ~~Violation and penalties.~~ Violation.**

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 577
Committee Substitute Favorable 7/9/97

Short Title: Forester Registration. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89B of the General Statutes reads as rewritten:

"Chapter 89B.

"Foresters.

"**§ 89B-1. General provisions.**

(a) No person ~~shall, in connection with his name or otherwise, assume,~~ shall use ~~or advertise any title or description tending to~~ the designation 'forester', 'registered forester', or any other descriptive terms that include the words 'forester' or 'registered forester' and that directly convey ~~convey, directly or indirectly, the impression~~ that ~~he~~ the person is a ~~registered~~ forester without first having been registered ~~as a registered forester as hereinafter provided.~~ under this Chapter.

(b) ~~It is the intention of this~~ This Chapter ~~to benefit and protect~~ benefits and protects the public by improving the standards ~~relative to~~ for the practice of professional forestry in North Carolina.

"**§ 89B-2. Definitions.**

As used in this Chapter:

(1) 'Board' ~~shall mean~~ means the State Board of Registration for Foresters, provided for by this Chapter.

(2) 'Forester' means a person who by reason of ~~his~~ special knowledge and training in natural sciences, mathematics, silviculture, forest

protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined.~~ forestry.

(3) ~~"Practicing"~~ 'Practice of forestry' means ~~giving~~ rendering professional forestry services, including but not limited to, consultation, investigation, evaluation, ~~education,~~ planning, or ~~responsible supervision of any~~ other forestry activities requiring knowledge, ~~and training in and experience of~~ training, and experience in forestry principles and techniques.

(4) 'Registered forester' means a person who has been registered pursuant to this Chapter.

(5) 'Consulting forester' means a ~~person~~ registered forester who:

~~a. Is registered by the State Board of Registration for Foresters;~~

~~b. Is a technically educated professional forester who is a graduate of a forestry curriculum of a college or university and who holds a bachelor's or higher degree in forestry; or has shown equivalent knowledge by passing the written examination administered by the State Board of Registration for Foresters as provided in this Chapter;~~

~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~

~~d.~~ a. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;

~~e.~~ b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and

~~f.~~ c. Has filed annually an affidavit with the ~~State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).

(6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"**§ 89B-3. State Board of Registration for Foresters; appointment of members; terms.**

(a) A State Board of Registration for Foresters is created to administer the provisions of this Chapter. The Board shall have five members as follows:

(1) Four duly practicing registered foresters, at least three of whom hold ~~at a minimum a bachelor's~~ a bachelors or higher degree from an accredited forestry school, and

(2) One public member.

Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

"§ 89B-4. Compensation and expenses of Board members.

Each member of the Board shall receive per diem and allowances as provided ~~with respect to occupational licensing boards~~ by G.S. 93B-5.

"§ 89B-5. Organization and meetings of the Board.

The Board shall meet ~~on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings~~ at least twice each year. In addition, special ~~Special~~ meetings may be held ~~at such time and place as~~ in accordance with the ~~bylaws~~ rules of the ~~Board may provide.~~ Board.

"§ 89B-6. Powers of the Board.

The Board may ~~make all reasonable and necessary~~ adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter.

"§ 89B-7. Receipts and disbursements.

The secretary of the Board shall receive and account for all moneys derived under ~~the provision of~~ this Chapter, and shall keep ~~such~~ these moneys in a separate fund ~~to be~~ known as the 'Registered Foresters' Fund.' Moneys in the ~~aforesaid fund~~ Fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in ~~such sum as the Board may determine, the premium of which shall be regarded as~~ an amount determined by the Board. The premium for the surety bond is a proper expense of the Board and shall be paid from the Registered Foresters' Fund.

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of ~~such~~ these assistants shall be paid out of the Registered Foresters' Fund.

"§ 89B-8. Records and reports.

The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; the applicant's place of business; ~~his~~ the applicant's educational and other qualifications; whether or not examination was required; whether the application was rejected or registration was granted; the date of action by the Board; and other information ~~as may be~~ deemed necessary by the

Board. ~~Annually on~~ Each July 1 the Board shall submit to the Governor a report of its transactions of the preceding year.

"**§ 89B-9. General requirements for registration.**

(a) ~~Applicants~~ An applicant for registration shall be registered upon satisfactory ~~showing~~ proof to the Board that the ~~applicant:~~ applicant is of good moral character and meets one of the following requirements:

~~(1) Is of good moral character, and~~

~~(2) Has either:~~

(1)~~a.~~ ~~Graduated~~ Graduation with a ~~bachelor's~~ bachelors or higher degree in a forestry curriculum from a school or college of forestry approved by the ~~Board~~ Board, passage of a comprehensive written examination, and ~~has had~~ the completion of two or more years' experience in ~~forestry; or~~ forestry.

(2)~~b.~~ ~~Passed~~ Passage of a written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, passage of a comprehensive written examination, and ~~has a record~~ the completion of ~~five~~ six or more years of active practice in forestry work ~~of a character satisfactory to the Board; provided that five or more years shall be~~ immediately prior to the ~~application; or~~ application. The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.

(3)~~c.~~ ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph.~~ Registration in good standing as a registered forester with the Board as of January 1, 1998.

(4) Practice of urban forestry for six years immediately prior to January 1, 1998, if the applicant meets all of the following conditions:

a. The applicant is a North Carolina resident at the time of filing the application.

b. The applicant practiced under the title 'urban forester' during the six-year period.

c. The applicant, prior to June 30, 1998, applies to the Board for registration and submits an affidavit under oath to the Board showing experience and education equivalent to that of a forester, as determined by the Board.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(b1) The Board may issue a forester-in-training certificate to an applicant who has completed the educational requirements under subdivision (a)(1) of this section.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) A ~~person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially same registration for North Carolina foresters who are registered under this Chapter.

(e) A nonresident of North Carolina may use the term 'registered forester' or other titles otherwise prohibited by this Chapter in North Carolina without becoming registered under this Chapter ~~provided that he is~~ if registered in another state which will reciprocate with the provision of this Chapter.

"§ 89B-10. Application and registration fees.

(a) Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be ~~fifteen dollars ($15.00),~~ in an amount determined by the Board, not to exceed fifty dollars ($50.00), which shall accompany the application. An additional ~~twenty dollars ($20.00)~~ fee, not to exceed forty dollars ($40.00), shall be paid upon issuance of the certificate of registration. ~~Should the~~ An applicant ~~fail or refuse to~~ that does not remit the certificate fee within 30 days after being notified ~~in the usual manner that the applicant has successfully qualified, he~~ of qualification forfeits the right to have the certificate ~~so issued and said~~ issued, and the applicant may be required again to submit an original application ~~fee therefor.~~ fee. ~~Should~~ If the Board ~~deny the issuance of~~ denies a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board.

(b) It is unlawful for any person to provide false or forged information to the Board or a member of the Board in obtaining a certificate of registration.

"**§ 89B-11. Expiration and ~~renewals.~~ renewals; continuing education.**

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. ~~It shall be the duty of the~~ The secretary of the Board ~~to notify, at his last registered address,~~ shall notify every person registered under this ~~Chapter~~ Chapter, at the person's last registered address, of the date of the expiration of ~~his~~ registration and the amount of fee ~~which shall be~~ required for its renewal for one year. ~~Such~~ The notices shall be mailed at least 30 days ~~in advance of~~ prior to the expiration date of ~~such~~ the registrations. The annual renewal fee for certificates shall be ~~twenty dollars ($20.00).~~ in an amount established by the Board, not to exceed fifty dollars ($50.00). The fee for issuance of replacement certificates of registration shall be five dollars ($5.00).

Any registration which has expired may be renewed by paying ~~a fee of twenty dollars ($20.00)~~ the registration fee plus ~~one dollar ($1.00)~~ one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed ~~twenty dollars ($20.00).~~ an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 credit hours per year, as a condition of renewal.

"**§ 89B-12. Examinations.**

When written examinations are required, they shall be held at ~~such~~ the time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination ~~at the expiration of~~ after six months and will be reexamined with payment of an additional fee ~~of fifteen dollars ($15.00).~~ established by the Board, not to exceed fifty dollars ($50.00). Subsequent examinations will be granted upon payment of ~~a fee of fifteen dollars ($15.00)~~ this fee for each examination. The Board may limit an applicant to three examinations.

"**§ 89B-13. Revocations and reissuance of registration.**

The Board ~~shall have the power to~~ may revoke or suspend the certificate of registration of any registrant who ~~is found, by the Board, to be guilty of~~ it finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of ~~forestry,~~ forestry or ~~who is found by the Board to have~~ has demonstrated incompetence as a practicing forester. The Board ~~is empowered to~~ may designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct by a registrant in the practice of forestry. ~~in connection with any forestry practice against any registrant that may come to its attention.~~

Any person may prefer charges against ~~any~~ a registrant. ~~Such~~ The charges shall be in ~~writing and~~ writing, ~~shall be~~ sworn to by the person making ~~them and shall be~~ them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may

appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"**§ 89B-14. Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.**

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board~~ Board. ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

"**§ 89B-15. ~~Violation and penalties.~~ Violation.**

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1998.

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August 17, 1998

MEMORANDUM

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Staff Attorney

RE: House Bill 577; Forester Registration
Proposed Committee Substitute

House Bill 577, introduced by Representative Weatherly, amends Chapter 89B of the General Statutes to mandate that all persons using the title "Forester" or Registered Forester" be registered by the State Board of Registration for Foresters. Curremt law provides only for voluntary registration and makes it unlawful for any person who is not registered to use the title "registered forester". The bill also raises the standards for forester registration and makes a number of other changes to Chapter 89B. These changes include:

(1) Addition of a requirement that an applicant for registration, except for a forester who has been registered in good standing as of January 1, 1998, or who is an "urban forester" (newly defined as a person engaging in forestry practice in an urban setting), must pass a comprehensive written exam as well as meet the other requirements to become a forester. Currently, an applicant must (i) have either a bachelors or higher degree in a forestry curriculum and two years of experience or (ii) pass an exam that shows knowledge approximating that obtained through graduation from a four-year forestry curriculum and five years of experience.

(2) An increase in the number of years of forestry experience from five to six years for an applicant without a bachelors or higher degree in forestry. As part of this change, the bill also provides that an Associate Applied Science degree in a curriculum approved by the State Board of Registration of Foresters is the equivalent of one year of experience, completion of the junior year of an approved forestry curriculum is the equivalent of two years of experience, and that completion of the senior year is the equivalent of three years of experience.

(3) Provision for the registration of an applicant who: (i) has practiced "urban forestry" for six years immediately prior to January 1, 1998, (ii) is a North Carolina resident, (iii) applies to the Board before June 30, 1998, for registration and submits a sworn affidavit showing experience and education equivalent to that of a forester.

(4) Allowing the Board to issue a forester-in-training certificate to an applicant who has graduated with a bachelors or higher degree in forestry but has not yet passed the test or gained the two years experience.

(5) Allowing the State Board of Registration for Foresters to set fees, subject to statutory maximums. Current application, registration, and renewal fees are set at $15, $20, and $20 respectively. Allowable fees are as follows:

- Application fee – not to exceed $50
- Registration fee – not to exceed $40
- Annual renewal fee – not to exceed $50
- Renewal fee for expired registration – the registration fee plus one-twelfth of the annual renewal fee per month from the date of expiration

Reexamination fee of $50

The bill is silent as to a fee for the first time an applicant takes the examination

(6) Allowing the Board to limit an applicant to three attempts to take and pass the examination

(7) Addition of a continuing education requirement that must not exceed 12 hours per year.

(8) Requiring each consulting forester to file annually with the Board affidavits of compliance with the requirements of Chapter 89B. A consulting forester is allowed to practice forestry management, appraisal, development, marketing, protection, and utilization for the benefit of the public on a fee, contractual, or contingency basis.

(9) Establishing a violation of the Chapter as a Class 3 misdemeanor (1-10 days community penalty, fine of up to $200, if no prior record).

The proposed committee substitute makes three changes to the bill. First, the effective dates in the bill are changed from January 1, 1998 to January 1, 1999. Secondly, the language establishing a continuing education requirement, G.G. 89B-11(b) calls for coursework "not to exceed 12 hours per year" instead of the reference to "credit hours". Finally, the pcs adds a definition of the term "Forestry" to mean the professional practice embracing the science, business, and the art of creating, conserving, and managing forests and forest lands for the sustained use and enjoyment of their resources, materials, or other forest produce.

The act becomes effective January 1, 1999.

H577-SMRF-001

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July 20, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Barbara Riley, Committee Counsel

RE: House Bill 577: Forester Registration

At the July 7, 1998 meeting of the Committee a number of questions were raised regarding regulation of foresters in other states, occupational licensing in North Carolina, and complaints received by the North Carolina Board of Forester Registration.

I spoke with Linda Moore, Executive Secretary of the State Board of Registration for Foresters. She indicated that few formal complaints are made to the Board. She estimated the number of complaints to be less than 10 per year. I also reviewed the questionnaire section of the Assessment Report for Foresters compiled for the Legislative Committee on New Licensing Boards. The report indicates that there were approximately 20 complaints filed with the Board for the period January 1993 through November of 1995. It also indicates, however, that numerous informal complaints are received from forest owners. A copy of that section of the report is attached.

My review of occupational licensing statutes showed that there is no uniformity in the licensing of various trades and professions. Some statutes simply prohibit the practice of particular trade, some prohibit both the practice as well as the assertion that one is a registered or licensed member of an occupation, and some, like the forester legislation, prohibit the use of the title or holding oneself out to be a type of professional or tradesman. The occupational licensing statutes that prohibit the use of a title include:

Architects
Landscape Architects
Landscape Contractors
Physician Assistants
Nurse Practitioners
Dentists

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Midwives
Psychologists
Embalmers, Funeral Service Providers. Funeral Directors
Occupational Therapist
Dietitian, Nutritionist
Athletic Trainer

Finally, the committee asked me to look at Forester registration statutes in other states. According to information provided to me by the Society of American Foresters, 15 states, including North Carolina, have some sort of forester registration requirement. Alabama, Massachusetts, and Mississippi prohibit the use of the title "Forester". Georgia, Maryland, New Hampshire, Oklahoma, South Carolina, and West Virginia prohibit the use of the title "Registered Forester", "Licensed Forester" or "Professional Forester".

OCCUPATIONAL REGISTRATION/LICENSING COMMITTEE QUESTIONNAIRE

Re: Amendments to Chapter 89B Forester Registration

2. **Have there been any complaints about the unregulated profession or occupation? Please give specific examples including complaint's names and addresses.**

Numerous informal complaints are heard, some factual, some rumor and most involving situations where less than knowledgeable forest owners were moved to pre-mature actions involving significant future economic loss and usually receiving less than market value for their forest or forest product. Some of these situations involve un-scrupulous entities working outside the competitive marketing network afforded via reputable forestry professionals and markets. Frequently these entities operate under the guise of being foresters recommending acceptable forestry practice.

Specific complaints are few in that there seem to be few individuals who are willing to be exposed to the legal liability of putting them in writing; particularly considering the minimal penalties invoked by the current Chapter. Most "wronged" landowners "take their lumps" from botched jobs, site damage, stolen timber and inadequate pricing. Few forest owners are positioned to keep up with current product specifications, volumes, weights & conversions, pricing, seasonal variations, best markets, regeneration techniques, chemical usage, genetic gains and claims, wildlife considerations and the myriad of old and new laws and regulations.

Reference is made to Minutes of State Board of Registration for Foresters for the period 1/28/93 through 11/6/95 wherein names, circumstances, actions and other details on some twenty (20) complaints are recorded. It is deemed not prudent to list details here but is assumed that the Committee (Occupational Licensing) has privilege to said Minutes.

It is conceded that one cannot be denied the "privilege" of sacrificing or foolishly disposing of their assets, be it land and/or timber. The amendment to the Chapter seeks to improve the public's opportunity to confidently identify and employ professionals, while reducing the probability that professional foresters would be perceived as party to such deception as described above.

//

Society of American Foresters

5400 Grosvenor Lane
Bethesda, MD 20814
(301)897-8720
(301)897-3690 (fax)
www.safnet.org

Date: 7/12/98 Time: 4:15 pm # of pages: 2
(including cover sheet)

TO:
Name: Barbara Riley
Fax #: 919-715-5460

FROM:
Name: Pat Cilley
Fax #: 301-897-3690

Comments

Urgent For Your Review Reply ASAP Please comment

Table 1 - Current Status of Licensing/ Registration / Certification Programs, as requested (as of 4/96).

Pat

1998 Society of American Foresters
National Convention in

Traverse City
MICHIGAN

Grand Traverse Resort • September 19-23, 1998

For the latest convention information visit SAF's website at www.safnet.org

Current Status of LRC Programs

State	Program	Education	Experience	Test	Continuing Education	Other
Alabama	M. Registration	BSF	2 yrs	yes	10 Credits/ Year	
Arkansas	V. Registration	BSF	3 yrs	yes	none	Exam if not educationally qualified
California	M. Registration	BSF	3yrs	yes	none	Other options for qualifications
Connecticut	Certification	none	none	yes	6 Credits/ 2 Year	-
Georgia	M. Registration	BSF	2 yrs	yes	12 Credits/2 Year	-
Maine	Licensing	BS, MS, and PhD	2 yrs	yes	12 Credits/2 Year	Other options for qualifications
Maryland	Licensing	BSF	2 yrs	none	8 Credits/ 2 Year	SAF or board approved school
Massachusetts**	Licensing					
Michigan	V. Registration	BSF	2 yrs	none	none	-
Mississippi	Licensing	BSF		yes	16 Credits/ 2 Year	Abide by a code of ethics
New Hampshire	Licensing	BSF	2 yrs	yes	20 Credits/ 2 Year	Exam if not educationally qualified Other options for qualifications
North Carolina	V/M Registration	BSF	2 yrs	yes	none	-
Oklahoma	V. Registration	BSF	2 yrs	none	none	-
South Carolina	M. Registration	BSF	2 yrs	yes	10 Credits/ Year	Exam if not educationally qualified
West Virginia	V. Registration	BSF	2 yrs	none	none	6 years if not educationally qualified

* M=Mandatory; V=Voluntary

The definition of "credits" differs with each state; generally equal to hours.

** The regulations are currently being developed

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. Aug. 18, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
H C Blanchard	Registered Forester 257 N Powell Blvd., Whiteville NC
Fred E. Whitfield	Registered forester 1324 Ridge Rd, Raleigh NC 27607
Sue-Ann Cox	FFF
Steve Woodson	NCFB
PG	NCFB
Sharon Ziman-Stant	DENR
Laura DeNure	DENR
Tim Baumgartner	DSWC, DENR
Vernon Cox	DSWC, DENR
Crissy Parker	Bone & Associates
Alicia Gregory	Poyner & Spruill

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	ZDA PA
Willie Rea	P.H.C.A
Tom E. Rea	N.C P.H.C.A
Michelle Cook	Weyerhaeuser
Bob Sloan	NC Forestry association
Roger Bone	Bone + Assoc.
L Rogers	DENR
Ruth Sapphire	NCDOT
Dave A Woody	DMV ENFORCEMENT
	—

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES.
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Hudson	Hunter Craft Inc Smithfield Ag Co
Nat Mund	Conservation Council of NC
Bob Sloan	NC Forestry Association
Lisa Martin	Upper Neuse River Basin Assn.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

August 25, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, August 25, 1998, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fifteen committee members present.

The following bill was discussed and all distributed material as well as copies of the bill are attached:

SENATE BILL 1284 - 1998 MARINE FISHERIES AMENDMENTS - Senator Albertson, sponsor, asked Senator Wellons to chair the committee so that he could explain the bill. There was a proposed committee substitute and Senator Albertson moved that it be adopted for discussion purposes. Motion carried. Jeff Hudson of staff explained the major changes in the proposed committee substitute and answered questions from committee members. Senator Horton said that something needed to be done to ensure that the Marine Fisheries Commission was not rendered impotent. Senator Perdue suggested that Senator Horton prepare an amendment to correct what he thought was an imbalance of the commission. Senator McDaniel sent forth an amendment but, after discussion by the committee, withdrew the amendment. Senator Horton said he thought the problems with the PCS should be worked out in this committee. It was decided that discussion on this bill would be continued at a later meeting.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, August 25, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 1284	1998 MARINE FISHERIES AMENDMENTS Senator Albertson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1284*
Proposed Committee Substitute S1284-PCS4711-RT/SB010

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. -- The Marine Fisheries Commission of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter 143B of the General Statutes."

Section 1.2. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.5.~~ G.S. 143B-289.51."

Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in

a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery."

Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~ fishery management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a ~~fisheries~~ fishery management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fishery management plan."

Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

"(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g)."

Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

"(h) Removal. -- The Governor may remove, as provided in ~~G.S. 143-13,~~ G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

Section 1.8. G.S. 143B-289.56(b) reads as rewritten:

"(b) ~~Five~~ Six members of the Commission shall constitute a quorum for the transaction of business. A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), or (3) of G.S. 143B-289.54(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-289.54(a) are present."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"**§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1284*

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors: Senators Albertson; and Jordan.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.2. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fisheries management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fisheries management plan."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"**§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the

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August 25, 1998

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel

Regarding: Proposed Committee Substitute 010 for Senate Bill 1284 (1998 Marine Fisheries Amendments)

Proposed Committee Substitute 010 for Senate Bill 1284 (1998 Marine Fisheries Amendments)

PART I. MARINE FISHERIES COMMISSION

Sections 1.1 and 1.2 update cross-references. *Effective retroactively to September 1, 1997.*

Section 1.3 removes an unnecessary tax reference. *Effective when this act becomes law.*

Section 1.4 authorizes the Marine Fisheries Commission (Commission) to regulate participation in a fishery if a federal fishery management plan has placed a quota on the State for the harvest of fish in that fishery. If the Commission regulates a fishery pursuant to this authority, the Division of Marine Fisheries (Division) may issue a license to participate in the fishery to a person who:

- Held a license issued by the Division to harvest, land, or sell fish during at least two of the three license years preceding the control date established by the Commission and
- Participated in the fishery during two of those license years by landing in the State at least the minimum number of pounds of fish established by the Commission

Effective July 1, 1999.

Section 1.5 clarifies a reference to federal law and authorizes the Commission to adopt temporary rules needed to remain in compliance with changes in federal fishery management plans. *Effective when this act becomes law.*

Section 1.6 adds to the Commission's appointment statute a cross-reference to the prohibition against a member of the Commission receiving a financial benefit from a Fishery Resource Grant Program grant. *Effective retroactively to September 1, 1997.*

Section 1.7 corrects a typographical error in a cross-reference. *Effective retroactively to September 1, 1997.*

Section 1.8 increases the quorum for the Commission from 5 to 6. This section also prohibits the Commission from transacting business unless a "commercial" member, other than the Chair, and a "recreational" member, other than the Chair, are present. *Effective when this act becomes law.*

PART II. FISHERY MANAGEMENT PLANS

Section 2.1 changes the term "advisory council" to "fishery management plan advisory committee" and makes technical corrections to the term "Fishery Management Plan". This section also directs the Department of Environment and Natural Resources (DENR) and the Commission to consult with and review comments by the regional advisory committees regarding the development of Fishery Management Plans, management measures to implement the plans, and temporary management measures. Finally, Section 2.1 adds a section specifically authorizing the Commission to include in a fishery management plan a recommendation that the General Assembly limit participation in a fishery. The Commission may make this type of recommendation only if it determines that optimal yield cannot otherwise be achieved and must consider:

- Current participation in and dependence on the fishery
- Past fishing practices in the fishery
- Economics of the fishery
- Capability of vessels to be used in another fishery
- Cultural and social factors relevant to the fishery and affected communities
- Capacity of the fishery to support biological parameters
- Equitable resolution of competing social and economic interests
- Other relevant considerations

Effective when this act becomes law.

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1 updates a cross-reference. *Effective retroactively to September 1, 1997.*

Section 3.2 removes an unnecessary tax reference. *Effective when this act becomes law.*

Sections 3.3 and 3.4 update cross-references. *Effective July 1, 1999.*

Sections 3.5 and 3.6 update cross-references. *Effective retroactively to September 1, 1997.*

Section 3.7 increases the penalty for the unauthorized taking of shellfish from a privately held shellfish bottom from a Class 2 misdemeanor to a Class A1 misdemeanor. *Effective December 1, 1998 and applies to offenses committed on or after that date.*

Section 3.8 amends the "act of God" defense to proclamation violations so that it is a defense to an enforcement action when a person is prevented from receiving notice of the proclamation due to a natural disaster or other act of God. *Effective when this act becomes law.*

Section 3.9 makes it unlawful under the fisheries statutes to steal buoys, markers, stakes, nets, pots, and other related devices and increases the penalty for robbing from, stealing, or injuring these devices. *Effective December 1, 1998 and applies to offenses committed on or after that date.*

Section 3.10 updates a cross-reference. *Effective July 1, 1999.*

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1 makes a conforming change to the vessel identification statute. *Effective July 1, 1999.*

Section 4.2 makes technical and conforming changes to the vessel identification statute related to commercial vessels. This section removes the income requirement from the definition of "commercial fishing vessel". *Effective July 1, 1999.*

Section 4.3 updates a cross-reference. *Effective July 1, 1999.*

Section 4.4 removes an unnecessary tax reference. *Effective when this act becomes law.*

Section 4.5 makes a technical change. *Effective when this act becomes law.*

Section 4.6 deletes the prohibition against selling fish using another person's endorsement to sell. This provision was mistakenly added in the Fisheries Reform Act. *Effective retroactively to August 14, 1997.*

Sections 4.7 and 4.8 delete old penalty provisions that conflict with the new penalties for the unlawful sale or purchase of fish established by the Fisheries Reform Act of 1997. *Effective retroactively to September 1, 1997.*

Section 4.9 amends the definition of "commercial fishing operation" to delete taking people fishing for hire and to exclude taking fish in a recreational fishing tournament with recreational gear and taking fish under a Recreational Commercial Gear License (RCGL). This section also defines "immediate family" for purposes of transferring a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License (RSCFL). Finally, Section 4.9 amends the definition of "North Carolina resident" found in the commercial fishing license statutes so that it is consistent with the definition of "resident" that applies throughout the marine, estuarine, and wildlife resources statutes. *Effective July 1, 1999.*

Section 4.10 amends and expands the general licensing provisions statute to:

- Provide that all coastal and estuarine fishing licenses, except the RCGL, expire on June 30 of each year
- Require that a person fishing pursuant to an assigned SCFL must have the SCFL and the assignment available for inspection
- Consolidate provisions from other statutes governing license issuance and renewal
- Require a licensee to apply for a replacement license within 30 days of a change in the licensee's name or address and authorize the Commission to establish replacement license fees of up to $10.00 in order to compensate the Division for the administrative costs associated with issuing replacement licenses
- Provide that eligibility to renew a SCFL extends until one year after the date the SCFL expires
- Prohibit a person from obtaining or renewing a license if, at the time of application, any other license held by the person has been suspended or revoked
- Prohibit a person from obtaining a license if, within the three years prior to application, the person has been determined to be responsible for four or more violations of federal or state laws governing the management of marine and estuarine resources
- Require a person applying for a license to certify that the person has not been determined to be responsible for four or more violations of federal or state laws governing the management of marine and estuarine resources
- Authorize the Division to cancel a license issued based on false information supplied by the applicant

Effective July 1, 1999.

Section 4.11 amends the SCFL statute to:

- Clarify that in order to take shellfish, a person must hold either a SCFL with a shellfish endorsement or a shellfish license
- Clarify that the SCFL authorizes the use of only one vessel at a time, unless the Commission adopts rules to exempt from this requirement unlicensed auxiliary vessels engaged in particular fisheries
- Delete general licensing provisions that were consolidated into the general licensing provision statute
- Delete references to vessel endorsements that are no longer necessary due to the replacement by Sections 4.14 and 4.15 of the vessel endorsement system with the vessel registration system
- Base the residency requirement for all persons, except military personnel, applying for a SCFL on the filing of a tax return as a North Carolina resident
- Exempt assignments lasting five days or less from filing requirements
- Provide that an assignee cannot further assign a SCFL
- Add assignment termination in the following cases:
    - the estate of the assignor notifies the assignee and the Division of termination
    - the assignee becomes ineligible to hold a license
    - upon the death of the assignee
    - upon suspension or revocation of the SCFL
    - at the end of the license year
- Clarify that a SCFL may only be transferred by the Division
- Clarify the process by which a SCFL may be transferred through an estate

Effective July 1, 1999.

Section 4.12 clarifies that all licensing provisions applicable to the SCFL are also applicable to the RSCFL, except that a RSCFL may not be assigned. This section also makes the transfer provision for the RSCFL consistent with the SCFL transfer provision revised by Section 4.11. *Effective July 1, 1999.*

Section 4.13 clarifies that a person must have the specific license to sell the type of fish the person is offering for sale. This section also deletes the term "nonprofit" from the provision governing the sale of fish by recreational fishing tournaments. Finally, Section 4.13 clarifies that the sale of fish by a recreational fishing tournament must be to a licensed fish dealer; gross proceeds from the sale must be used for charitable, religious, educational, civic, or conservation purposes only; and gross proceeds from the sale must not be used to pay tournament expenses. *Effective July 1, 1999.*

Section 4.14 deletes the vessel endorsement provision. These provisions are reconstituted in the commercial fishing vessel registration requirements established by Section 4.15. Section 4.14 also clarifies that a menhaden endorsement of a SCFL is only required to take, land, or sell menhaden taken by a purse seine. Finally, Section 4.14 provides that a shellfish endorsement of a SCFL authorizes the harvest and sale of shellfish. *Effective July 1, 1999.*

Section 4.15 requires vessels engaged in commercial fishing operations, except for non-motorized auxiliary vessels, to be registered by the Division. This requirement replaces the vessel endorsement provisions deleted by Section 4.14. Section 4.15 requires an owner to annually register each vessel engaged in a commercial fishing operation. Vessel registration fees remain the same as the vessel endorsement fees deleted by Section 4.14. *Effective July 1, 1999, and expires September 1, 2003.*

Section 4.16 clarifies the eligibility requirements for obtaining a menhaden license for nonresidents not eligible for a SCFL. This section also provides that crew members of a vessel engaged in a commercial fishing operation harvesting and selling menhaden are not required to hold a menhaden nonresident license or a SCFL when working under the direction of a person who holds a menhaden license. *Effective July 1, 1999.*

Section 4.17 provides that a shellfish license is required for taking shellfish from privately held grounds. This section also clarifies the personal use exemption to the shellfish license requirements. Finally, Section 4.17 moves the issuance and renewal provisions from the shellfish license statute to the general licensing provision statute and deletes the reference to the vessel endorsement provisions deleted by Section 4.14. *Effective July 1, 1999.*

Section 4.18 provides that fish dealer licenses will be available at all offices of the Division. This section also provides that failure to comply with the requirement that a fish dealer apply for a replacement license within 30 days after changing the name or address of the fish dealer operation will result in a revocation of the fish dealer license. Furthermore, Section 4.18 clarifies that for a fish dealer to lawfully buy fish, the seller must present the license required to sell the type of fish being sold and the registration for the vessel used to catch the fish. Finally, this section limits the provision governing the unlawful purchase, possession, and sale of fish to fish dealers. *Effective July 1, 1999.*

Section 4.19 provides that the replacement license provision in the general licensing statute applies to pier licenses. *Effective July 1, 1999.*

Section 4.20 makes a technical change. *Effective July 1, 1999.*

Section 4.21 provides that it is unlawful for a person fishing under a RCGL to possess fish in excess of recreational possession limits. This section also adds an exemption to the RCGL statute allowing a person to take shellfish by nonmechanical means up to the personal use limits without holding a RCGL. *Effective July 1, 1999.*

Section 4.22 updates cross-references. *Effective July 1, 1999.*

Section 4.23 provides for North Carolina membership in the Mid-Atlantic Fishery Management Council. This provision is parallel to the membership provision currently in place for North Carolina membership in the South Atlantic Fishery Management Council. *Effective when this act becomes law.*

Section 4.24 clarifies that the number of SCFLs available in each license year, beginning with the 2000-2001 license year, is the number of the temporary cap (number of endorsements to sell held June 30, 1999, plus a one time addition of 500 SCFLs) less the sum of SCFLs issued and SCFLs renewed during the previous license year. This section also provides that a person who holds a non-vessel endorsement to sell, other than an endorsement for an aquaculture operation or fishing tournament, on June 30, 1999, is eligible to obtain a SCFL. Finally, Section 4.21 modifies the eligibility review process for the 500 additional SCFLs. The SCFL Eligibility Board (Board) is established to replace the Division in the application of the eligibility criteria established by the Commission. The Board is composed of the following members:

- The Secretary of Environment and Natural Resources or the Secretary's designee
- The Fisheries Director or the Director's designee
- The Chair of the Commission or the Chair's designee

Decisions by the Board are exempt from administrative review, but are subject to judicial review. *Effective July 1, 1999.*

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1 directs the Joint Legislative Commission on Seafood and Aquaculture and its Advisory Committee to study the biological, habitat, and socioeconomic impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. This section specifies that this study should be conducted in conjunction with any similar studies funded by the Fishery Resource Grant Program. The Joint Legislative Commission on Seafood and Aquaculture must report its findings and recommendations, if any, to the 1999 General Assembly. *Effective when this act becomes law.*

Section 5.2 authorizes every agency to which this act applies to adopt temporary rules until all rules necessary to implement this act have been adopted as temporary or permanent rules. *Effective when this act becomes law.*

Section 5.3 explains the use of headings in the bill. *Effective when this act becomes law.*

Section 5.4 provides for the severability of the provisions of the bill. *Effective when this act becomes law.*

Section 5.5 establishes the effective dates of the sections of the bill. *Effective when this act becomes law.*

VISITOR REGISTRATION SHEET

SENATE AGRICULTURE/ENVIRONMENT/NAT.RES. 8/25/98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura DeVivo	DENR
Richard Rogus	DENR
Mike Carpenter	NCHSA
Pam Williams	NCCHSA
Nat Mund	Conservation Council of NC
David Knight	NC Sierra Club
[illegible]	WCSR
C. Parker	Bone & Assoc.
Kim Smith	NCLM
Dick Brame	CCA
Doug Rader	EDF
Jim Hackett	NCPC
Lon Wilson	NC A&TC 7

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan McLawhorn	DENR
Amy Gillespie	NC Attorney General's office
Dan Whittle	NC EDF
Tom Bean	NC WF
Molly Diggins	NC Sierra Club
PB	NCFB
Larry W Adams	CTBMA
[illegible]	DENR

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

September 1, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, September 1, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were thirteen committee members present.

The following bill was discussed and all distributed material as well as copies of the bill are attached:

SENATE BILL 1284 - 1998 MARINE FISHERIES AMENDMENTS - Senator Albertson, sponsor, asked Senator Wellons to chair the committee so that he could explain the bill. There was a proposed committee substitute and Senator Albertson moved that it be adopted for discussion purposes. Motion carried. Sherri Evans-Stanton of DENR make comments on the bill. Dan McLawhorn of DENR answered questions from committee members. Senator McDaniel moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion passed. There was a recommended referral to Finance.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, September 1, 1998
11:00 a.m.
Room 1124 - LB

AGENDA

SB 1284	1998 MARINE FISHERIES AMENDMENTS Senator Albertson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, September 01, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

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

S.B. **1284** 1998 Marine Fisheries Amendments

Draft Number:	PCS9612
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1284*
Proposed Committee Substitute S1284-PCS9612-RT/SB012

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS AND TO CLARIFY THE RESERVED RIGHTS OF THE PUBLIC IN OCEAN BEACHES SEAWARD OF THE VEGETATION LINE.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. -- The Marine Fisheries Commission of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter 143B of the General Statutes."

Section 1.2. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.5.~~ G.S. 143B-289.51."

Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the

harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery."

Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~ fishery management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a ~~fisheries~~ fishery management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fishery management plan."

Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

"(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g)."

Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

"(h) Removal. -- The Governor may remove, as provided in ~~G.S. 143-13,~~ G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

Section 1.8. G.S. 143B-289.56 reads as rewritten:

"**§ 143B-289.56. 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-289.54.

(b) (1) ~~Five~~ Six members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), or (3) of G.S. 143B-289.54(a) and one member, other than

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1284*

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors: Senators Albertson; and Jordan.

Referred to: Agriculture/Environment/Natural Resources.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.2. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fisheries management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fisheries management plan."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"**§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the

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September 1, 1998

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel

Regarding: Proposed Committee Substitute 012 for Senate Bill 1284 (1998 Marine Fisheries Amendments)

Proposed Committee Substitute 012 for Senate Bill 1284 (1998 Marine Fisheries Amendments)

Note: *Listed below are the changes made to the 010 Proposed Committee Substitute for Senate Bill 1284, which was before this committee on August 25, 1998, to produce the 012 Proposed Committee Substitute for Senate Bill 1284.*

BILL TITLE

The title of Senate Bill 1284 has been amended with the addition of the words "AND TO CLARIFY THE RESERVED RIGHTS OF THE PUBLIC IN OCEAN BEACHES SEAWARD OF THE VEGETATION LINE". (Page 1, lines 3 through 5)

PART I. MARINE FISHERIES COMMISSION

Section 1.8 provides that if the Commission is unable to transact business because a "commercial" member or a "recreational" member is not present, the Chair of the Commission will call another meeting of the Commission within 30 days and will place on the agenda for that meeting every matter for which the Commission was unable to transact business. For any meeting called under this provision, five members will constitute a quorum and the presence of a "commercial" member and "recreational" member will not be required. *Effective when this act becomes law.* (Page 3, lines 3 through 10)

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.24 clarifies that the number of SCFLs available in each license year, beginning with the 2000-2001 license year, is the number of the temporary cap (number of endorsements to sell held June 30, 1999, plus a one time addition of 500 SCFLs) less the sum of SCFLs issued **and renewed** during the previous license year. *Effective July 1, 1999.* (Page 28, lines 13 and 14)

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section5.1 provides that the seaward boundary of coastal lands established by G.S. 77-20 shall not be construed to impair public use of the ocean beaches seaward of the first line of stable, natural vegetation. G.S. 77-20 has established the mean high water mark as the seaward boundary of all property within the State that adjoins the ocean and that is not owned by the State. Section 5.1 defines "vegetation line" as the first line of stable, natural vegetation bordering the ocean beach landward of the mean high water mark. *Effective when this act becomes law.* (Page 29, lines 36 through 44)

Section 5.2 directs the Joint Legislative Commission on Seafood and Aquaculture and its Advisory Committee to study the biological, habitat, and **socioeconomic** impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. *Effective when this act becomes law.* (Page 30, line 4)

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 9/1/98

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilson	NCHBA
Laura DeVito	DENR
Steve Woodson	NC Farm Bureau
Doug Rader	NCEDF
Jerry Schill	NCFA
Allen Jernigan	NCAGO
Dan Oakley	NCAGO
Jane Gray	DOJ
George Hurst	DOJ
Amy Gillespie	NC AGO
Jimmy Johnson	MFC

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 9/1/98

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheri Evans-Stanton	DENR
Dan McLawhorn	DENR
[illegible]	GA St Hwy
Kim Smith	NCLM
Benny Scarbro	NC Hog Council
Kelly Kukura	DuPont
Paul S Mew	N.C. Agribusiness
[illegible]	Bowe & Assoc — NCPC
Lu-Ann Cox	FFF
Bob Shearin	NC Forestry Assoc.
[illegible]	EB

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES 9/1/98
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Cerreto	NCFBA

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

September 10, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, September 10, at 9:30 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were eight committee members present.

The following bill was discussed and all distributed material as well as copies of the bill are attached:

HOUSE BILL 1483 - EXPEDITE LOW RISK LUST CLEANUP CLOSURES - Representative Mitchell, sponsor, had requested that George Givens of staff explain the bill. There was a proposed committee substitute before the committee and Senator Cochrane moved that it be adopted for discussion purposes. Motion passed. After discussion, Senator Cochrane moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion passed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, September 10, 1998
9:30 a.m.
Room 1124 - LB

AGENDA

HB 1483 EXPEDITE LOW RISK LUST CLEANUP CLOSURES
Representative Mitchell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, September 10, 1998

SENATOR ALBERTSON,
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)**1483** Expedite Low Risk LUST Cleanup Closures.

Draft Number:	PCS6471
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	NO

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1483*
Committee Substitute Favorable 8/20/98
Third Edition Engrossed 9/2/98
Proposed Senate Committee Substitute H1483-PCS6471-RT/SG005

Short Title: Expedite Low Risk LUST Cleanup Closures. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO EXPEDITE THE CLOSURE OF LOW RISK LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUPS BY ALLOWING THE COST OF OBTAINING THE ADDITIONAL INFORMATION REQUIRED TO ASSESS THE RISK OF RELEASES REPORTED PRIOR TO THE EFFECTIVE DATE OF THE RISK ASSESSMENT RULES TO BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE COST OF CONNECTING THIRD PARTIES TO PUBLIC WATER SYSTEMS MAY BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO MAKE LANDOWNERS ELIGIBLE FOR REIMBURSEMENT OF CLEANUP COSTS FROM THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO REQUIRE THAT ASSESSMENT AND CLEANUP TASKS AND COSTS BE PREAPPROVED BEFORE WORK PROCEEDS, TO MAKE PETROLEUM COMMERCIAL UNDERGROUND STORAGE TANK OPERATING PERMITS SUBJECT TO ADDITIONAL FEDERAL REQUIREMENTS APPLICABLE IN 1998, TO PROVIDE FOR ASSIGNMENT OF PAYMENTS FROM THE COMMERCIAL FUND AND THE NONCOMMERCIAL FUND, TO ESTABLISH A DE

MINIMIS REPORTING REQUIREMENT FOR PETROLEUM UNDERGROUND STORAGE TANK SPILLS AND OVERFILLS OF LESS THAN TWENTY-FIVE GALLONS THAT ARE CLEANED UP WITHIN TWENTY-FOUR HOURS, TO PROVIDE THAT FEDERAL LIMITATIONS ON LENDER LIABILITY APPLY TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, TO PROVIDE THAT RULES APPLICABLE TO COMMERCIAL UNDERGROUND STORAGE TANKS DO NOT APPLY TO CERTAIN TANKS, AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. **Cost of obtaining additional information required to assess risk of releases reported prior to effective date of risk assessment rules payable from the Commercial Fund or the Noncommercial Fund under certain circumstances.** -- (a) The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to this section.

(b) Subject to the requirements and limitations of this section, an owner, operator, or landowner may elect to have the Commercial Fund or the Noncommercial Fund, as appropriate, pay or reimburse the cost of obtaining the additional information needed by the Commission and the Department to assess the risk to human health and the environment posed by a discharge or release from a petroleum underground storage tank under rules adopted by the Commission pursuant to G.S. 143-215.94V without paying the costs for which the owner, operator, or landowner would otherwise be responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

(c) The Department shall pay on behalf of, or reimburse a cost paid by, an owner, operator, or landowner only if:

(1) The owner, operator, or landowner meets all the requirements of Part 2A of Article 21A of the General Statutes that establish eligibility for payment or reimbursement of costs other than the requirement that the owner, operator, or landowner pay the costs for which the owner, operator, or landowner is otherwise responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

(2) The discharge or release was reported as required by G.S. 143-215.85 prior to 2 January 1998.

(3) The owner, operator, or landowner has complied with 15A NCAC 2N.0704.

(4) The Department determines that additional work is necessary under 15A NCAC 2L.0115(c)(4) to classify the risk to human health and the environment posed by the discharge or release.

(5) The Department approves the additional work and the cost of the additional work before the owner, operator, or landowner proceeds with the additional work.

(d) The Department shall pay or reimburse claims under this section in the order in which the claims are received. The total of all costs

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1483*
Committee Substitute Favorable 8/20/98
Third Edition Engrossed 9/2/98

Short Title: Expedite Low Risk LUST Cleanup Closures. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO EXPEDITE THE CLOSURE OF LOW RISK LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUPS BY ALLOWING THE COST OF OBTAINING THE ADDITIONAL INFORMATION REQUIRED TO ASSESS THE RISK OF RELEASES REPORTED PRIOR TO THE EFFECTIVE DATE OF THE RISK ASSESSMENT RULES TO BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE COST OF CONNECTING THIRD PARTIES TO PUBLIC WATER SYSTEMS MAY BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO MAKE LANDOWNERS ELIGIBLE FOR REIMBURSEMENT OF CLEANUP COSTS FROM THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO REQUIRE THAT ASSESSMENT AND CLEANUP TASKS AND COSTS BE PREAPPROVED BEFORE WORK PROCEEDS, TO MAKE PETROLEUM COMMERCIAL UNDERGROUND STORAGE TANK OPERATING PERMITS SUBJECT TO ADDITIONAL FEDERAL REQUIREMENTS APPLICABLE IN 1998, TO PROVIDE FOR ASSIGNMENT OF PAYMENTS FROM THE COMMERCIAL FUND AND THE NONCOMMERCIAL FUND, TO ESTABLISH A DE MINIMIS REPORTING REQUIREMENT FOR PETROLEUM UNDERGROUND

STORAGE TANK SPILLS AND OVERFILLS OF LESS THAN TWENTY-FIVE GALLONS THAT ARE CLEANED UP WITHIN TWENTY-FOUR HOURS, TO PROVIDE THAT FEDERAL LIMITATIONS ON LENDER LIABILITY APPLY TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, TO PROVIDE THAT RULES APPLICABLE TO COMMERCIAL UNDERGROUND STORAGE TANKS DO NOT APPLY TO CERTAIN TANKS, AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS.

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(b) Subject to the requirements and limitations of this section, an owner, operator, or landowner may elect to have the Commercial Fund or the Noncommercial Fund, as appropriate, pay or reimburse the cost of obtaining the additional information needed by the Commission and the Department to assess the risk to human health and the environment posed by a discharge or release from a petroleum underground storage tank under rules adopted by the Commission pursuant to G.S. 143-215.94V without paying the costs for which the owner, operator, or landowner would otherwise be responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

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(1) The owner, operator, or landowner meets all the requirements of Part 2A of Article 21A of the General Statutes that establish eligibility for payment or reimbursement of costs other than the requirement that the owner, operator, or landowner pay the costs for which the owner, operator, or landowner is otherwise responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

(2) The discharge or release was reported as required by G.S. 143-215.85 prior to 2 January 1998.

(3) The owner, operator, or landowner has complied with 15A NCAC 2N.0704.

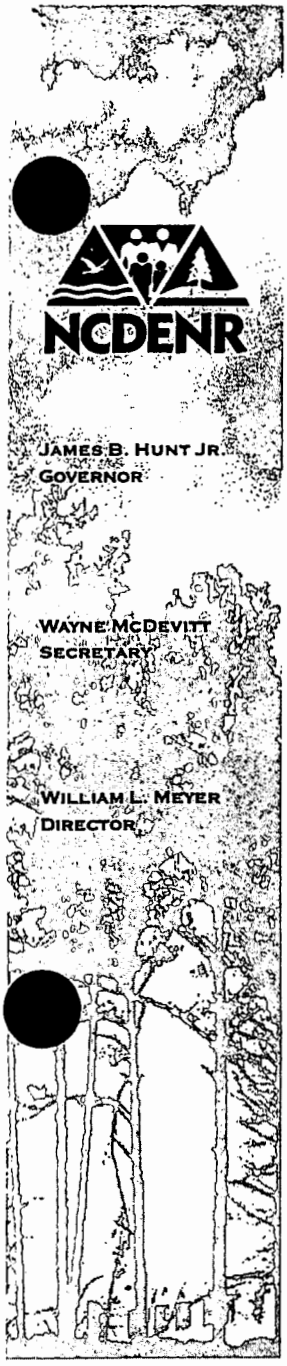
(4) The Department determines that additional work is necessary under 15A NCAC 2L.0115(c)(4) to classify the risk to human health and the environment posed by the discharge or release.

(5) The Department approves the additional work and the cost of the additional work before the owner, operator, or landowner proceeds with the additional work.

(d) The Department shall pay or reimburse claims under this section in the order in which the claims are received. The total of all costs paid or reimbursed under this section in any calendar month shall

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT

September 4, 1998



MEMORANDUM

TO: Henry M. Lancaster

FROM: Burrie vD. Boshoff

SUBJECT: Comments to amendment of HB 1483

We would prefer that the first sentence of Section 5, 143-215.94E(e2) remain with the word "may". "May" was intentionally used in order to control the workload of staff. Allowing rules to be written that would allow for pre-approval to be introduced slowly, one phase of work at a time, would allow the staff to handle the change and workload accordingly. The same section also contains wording on how the Department will
". . . reimburse the cost of a task in which pre-approval is not required. . . ", which would then require that those tasks not requiring pre-approval be reasonable and necessary.

If the word "shall" replaces the word "may" in this section, the additional workload will not be able to be met with the current staffing restraints. It is estimated that a minimum of four positions and an estimated cost of $260,000 per year for salary, benefits, travel, and other administrative costs would be necessary to handle the additional work.

If the word "shall" replaces the word "may" in this section and additional staff is not an option, we will not be able to deal with as many sites in as timely of a manner. In addition, we will write rules that address pre-approval, as required in this statute. However, it will then be necessary to write policy that will blanket pre-approve with maximum reimbursable rates certain aspects of work such as tank closures, initial abatement, and most assessment work.

UST SECTION
P.O. BOX 29616, RALEIGH, NC 27626-0616 / 2728 CAPITAL BLVD., RALEIGH, NC 27604
PHONE 919-733-8486 FAX 919-733-9413
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NCDENR

JAMES B. HUNT JR.
GOVERNOR

WAYNE MCDEVITT
SECRETARY

WILLIAM L. MEYER
DIRECTOR

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT

August 24, 1998

Environmental Service Companies and Consultants

SUBJECT: Underground Storage Tank (UST) Closure Policy

In response to concerns of the high cost and excessive sampling required for UST closure investigations, the following policy changes have been made. Effective immediately, we will allow the use of Total Petroleum Hydrocarbons (TPH) methods 5030 and 3550 (see attached table) to meet the regulated UST closure requirements instead of using the EPA 8000 series and the MADEP methods to meet the analytical requirements at UST closure. A sample must be collected from all of the locations outlined in the January 1998 Guidelines. A "no further action" letter may be issued to sites in which all analytical results are less than 10 mg/kg. A site with analytical results equal to or greater than 10 mg/kg for any sample location must continue with a soil contamination report or a limited site assessment in accordance with the risk-based rule [15A NCAC 2L .0115(c)].

If obvious contamination (e.g., petroleum-saturated soil, large hole in tank, free product in pit, etc.) remains after a regulated UST has been removed, sampling can be reduced to one confirmation sample from beneath each tank plus the required samples beneath the lines and dispensers. All samples should be analyzed by the appropriate TPH method (see attached table).

If UST closure samples were collected and analyzed for TPH as described above, prior to the date of this letter, the results may be accepted.

In addition, pursuant to the January 1998 Guidelines, the analysis at waste oil UST closures included analysis by EPA method 8080 for pesticides and polychlorinated biphenyls (PCBs). However, analysis for these constituents is not necessary when the waste oil is from crankcase oil. Therefore, effective immediately, analysis for EPA 8080 (pesticides/PCBs) will not be required for UST closure investigations at service stations.

For home-heating oil USTs where contamination is suspected or when sampling is necessary for a real estate transaction, samples should be collected as follows. For tanks less than six feet in length, one soil sample should be collected from below the tank (near the bottom, if the tank is not removed), at a depth no greater than two feet into the native soil. For tanks greater than six feet in length, two soil samples should be collected. In addition, one sample should be collected from beneath the piping lines, if the lines exceed ten feet in length. A certified laboratory should analyze samples by the appropriate TPH methods as shown in the attached table. Any TPH analytical result equal to or greater than 10 mg/kg will indicate a level of contamination that requires notification to the Division of Waste Management, UST Section.

UST SECTION
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Should you have any questions concerning these changes, please call the UST Section at (919) 733-8486.

Sincerely,

Burrie Boshoff, Chief
Underground Storage Tank Section

Approved Methods for Soil Analyses at UST Closures

(Laboratories must be certified by the North Carolina DWQ to perform the following methods)

Contaminant Testing For:	Method (See Notes)	Reportable Concentrations
1. Low Boiling Point Fuels: gasoline, aviation gasoline, gasohol, etc.	1) 5030 sample preparation with a modified 8015 (California GC-FID Method).	10 ppm
2. Medium/High Boiling Point Fuels: jet fuels, kerosene, diesel, varsol, mineral spirits, naphtha, fuel oil #2, etc.	1) 5030 **AND** 3550 sample preparation with modified 8015 (California GC-FID Method).	10 ppm for 5030 **AND** 10 ppm for 3550
3. Heavy Fuels: #4, #5, #6 fuel oils; motor oil; hydraulic fluid; etc.	1) 3550 sample preparation with modified 8015 (California GC-FID Method).	10 ppm
4. Used / Waste Oil	1) 5030 **AND** 3550 sample preparation with modified 8015 (California GC-FID Method). **AND** 2) EPA 8080 (pesticides/PCBs)* (Not required if UST is located at a service station) **AND** 3) EPA 3050 or 3051 Preparation: Total Metals (Chromium and Lead)	10 ppm for 5030 **AND** 10 ppm for 3550 **AND** Any amount above the MDL for 8080 and 3050 or 3051

* EPA 8080 has been replaced by a combination of EPA 8081 and EPA 8082 in the SW 846 test methods. Continue to analyze for EPA 8080 until laboratories are certified for EPA 8082. (Laboratory certification is already available for EPA 8081.)

Abbreviations

EPA = Environmental Protection Agency
MDL = Method Detection Limit

NOTE: *Other EPA approved comparable methods which have similar costs, same constituents, and equivalent or lower detection limits may be used if analyses are conducted by a NC certified laboratory. 2) Report all results on a "dry weight" basis.*

cc: Bill Meyer, Mike Kelly, Bill Reid, George Matthis, Ruth Strauss, Marcia Kremer, Regional UST Supervisors

NCDENR

JAMES B. HUNT JR.
GOVERNOR

WAYNE MCDEVITT
SECRETARY

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

August 19, 1998

MEMORANDUM

TO: Representative Edins,
Representative Hill,
Representative Mitchell,
Representative Watson,
Senator Albertson ,
Senator Horton,
Senator Odom:

FROM: Henry M. Lancaster, II

SUBJECT: Underground Storage Tanks (USTs)

In response to concerns about underground storage tanks and current proposed legislation, the following should act as a means to address these concerns. The following issues were discussed in the UST workgroup. Many of these issues are already addressed within existing legislation or rules while the others do require guidance or policy changes. As the Department, we commit to seeing that the necessary changes discussed below are implemented.

1) Cost associated with determining if a release exists (UST Closure sampling) – The concern of the high cost and excessive sampling required for a clean site will be addressed by allowing the following option for UST closure sampling analysis required for regulated USTs. It should be noted that sampling and analysis by a certified laboratory is required for closure of all regulated USTs and is required of only those non-regulated USTs that have some reason to suspect that a discharge or release has occurred. Therefore, when removing a home-heating oil tank, analysis of samples by a certified laboratory is not required unless there is reason to believe a discharge or release has occurred (e.g., stained soils, odors, hole in the tank, etc.).

   Although closure samples are not required for home-heating oil or other non-regulated tanks, lending institutions are sometimes reluctant to make loans unless soil samples are collected from below the tank and are analyzed for possible contamination. If this type of information is required by a lending institution, we recommend that a qualified professional be retained to collect soil samples. Attachment 1 is a letter that will be made available to homeowners which outlines the procedure

P.O. BOX 27687, RALEIGH NC 27611-7687 / 512 NORTH SALISBURY STREET, RALEIGH NC 27604
PHONE 919-733-4984 FAX 919-715-3060 WWW.EHNR.STATE.NC.US/EHNR/
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in which the samples should be collected and analyzed to satisfy lending institutions that a property is "clean".

Regulated USTs will now have the option of collecting samples to be analyzed by a certified laboratory for the Total Petroleum Hydrocarbons (TPH) methods 5030 and 3550 to meet the UST closure requirements. Analysis by these TPH methods will substantially reduce the costs and will provide enough information to determine if a discharge or release requiring further action has occurred. Samples will need to be collected beneath the tanks, lines, and dispensers, as outlined in January 2, 1998 guidance document, to obtain a clean UST closure. A TPH level of equal to or greater than 10 mg/kg will indicate that the responsible party must notify the Department that a discharge or release has occurred and will require that further investigation be conducted following the approved risk-based rules (15A NCAC 2L .0115).

If an obvious release is discovered while removing a regulated UST, one confirmation sample from beneath each tank must be collected and analyzed by a certified laboratory for the TPH methods in order to confirm the release and to determine which of the tanks contributed to the discharge or release. Samples must also be collected from beneath the lines and dispensers, as outlined in the January 2, 1998 guidelines, and analyzed by the appropriate TPH methods.

A letter is being prepared that will be sent to the section's "Environmental Service Companies and Consultants" list to notify them of this change in policy. Information about this change in policy will also be available on the UST Section Webpage.

2) Review and Closure of Low Risk Sites – The Regional Offices have been instructed to begin reviewing low risk sites with a Comprehensive Site Assessment (CSA) submitted at a rate of three sites per week per incident manager. Those sites which can be immediately closed will receive a "no further action" letter. Those in which additional information is required to determine if a site meets the closure requirements under the risk-based rule will be counted and used for statistical purposes. If a site is discovered that was incorrectly classified as low risk and may pose a risk to human heath or the environment, that site will be reclassified. Reviewing these files is expected to close low risk sites, discover sites which are incorrectly classified, and gain a more accurate understanding of the sites which are classified as low risk and their potential for site closure.

Attachment 2 is the memo sent to the regional offices to notify them of this priority change. A second memo and possibly a training session is

being considered to help clarify this regional initiative and to promote consistency between the regions.

3) Deed Restrictions – It is agreed that the UST program does have the authority to use land use restrictions based on G.S. 143-215.84(F) and 143-215.85(A). Implementation guidance and language is currently being written based on guidance in existence from other programs in the Division of Waste Management in which deed restrictions are already being implemented. Deed restrictions allow, based on site-specific information and a restriction put on a property deed, low risk sites to receive a "no further action" letter by cleaning up to the industrial/commercial soil cleanup levels only.

Once the guidance procedures are complete a letter will be prepared to send to the section's "Environmental Service Companies and Consultants" list to notify them of this option.

4) Water Supply well within 1000-ft – We have taken the opportunity to re-evaluate this portion of the risk-based rule. Based on previous discussions it is our understanding that everyone agrees that our reasoning for maintaining the 1000-ft radius as an initial high risk classification is justified. Data collected on plume lengths from each of the seven DENR regions of the State found that the 1000-ft radius should not be reduced. As an initial criteria, it will catch most cases and allow for a small buffer zone.

5) Requirements for Home-Heating Oil USTs - Based on current definitions in 15A NCAC 2N and CFR 280, home-heating oil tanks are non-regulated, non-commercial underground storage tanks. Therefore, home heating oil tanks are exempt from the "technical regulations" in 15A NCAC 2N that apply to regulated USTs. Technical regulations refer to leak detection monitoring, protection from corrosion, spill and overfill prevention, and UST closure, assessment, and cleanup requirements. The groundwater regulations in 15A NCAC 2L and Oil Pollution and Hazardous Substance Control Act do apply if there is a leak or spill from a home-heating oil UST. Access to the Noncommercial Trust Fund for a non-regulated UST is contingent on the release being reported and the site cleaned up in a cost-effective manner in accordance with the current rules and guidance.

Attachment 3 is a letter that will be made available to homeowners that explains the regulatory requirements for residential home-heating oil tanks. In addition, both a *Home Heating Oil* brochure and a *Cleanup Funds* brochure are available to the public.

6) Reporting Limit of 25-gallons for Spills and Overfills – A reporting limit of 25 gallons for spills and overfills is currently included in 15A NCAC 2N .0604 and in CFR 280.53 with the following criteria:

(f) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum and report to the Department within 24 hours if the release exceeds 25 gallons or that causes a sheen on a nearby surface water.

(g) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons. If cleanup up cannot be accomplished with 24 hours, owners and operators must immediately notify the Department.

The proposed addition to the statute will extend this reporting limit to spills and overfills of petroleum from non-regulated USTs such as home-heating oil tanks. Currently any amount spilled from a non-regulated UST must be reported to the Department.

7) Lender Liability – Limiting the liability of lenders is addressed in the state's rules governing groundwater quality and classifications [15A NCAC 2L .0101(b)] as follows:.

"... or a person whose interest or ownership in the property is based or derived from a security interest in the property, shall not be considered a responsible party."

Limiting lender liability is also already addressed in 40CFR 280 Subpart I. Therefore, it seems unnecessary to confuse the issue by putting a clause similar to this into the statute. However, if wording is added to the statute it is vital that the wording be identical to the Federal Regulations in 40CFR 280 Subpart I to avoid interpretation issues.

Again, the above issues and resolutions were discussed in the UST workgroup. We hope this letter addresses your concerns. If there are additional issues of concern or other questions, please let us know and we will do our best to address them.

Sincerely,

Henry M. Lancaster, II
Deputy Secretary DENR

cc: Bill Meyer
Mike Kelly
Burrie Boshoff
George Givens
Doug Howey, PMA
Ruth Strauss
Marcia Kremer
Bill Reid
George Matthis
UST Regional Team Leaders

ATTACHMENTS

NCDENR
JAMES B. HUNT JR.
GOVERNOR
WAYNE McDEVITT
SECRETARY
WILLIAM L. MEYER
DIRECTOR

Attachment 1

UST SECTION

SUBJECT: Transfer of Property Containing a Residential Heating Oil Tank

Dear Homeowner:

This is to inform you that home heating oil tanks are exempt from the technical criteria and standards that apply to commercial regulated underground storage tanks (USTs). If you are no longer using a home heating oil tank, you are not required under the federal or state regulations to close it (i.e., remove it from the ground or fill it with a solid inert material such as sand, and analyze soil samples for possible contamination). However if you discover signs of a leak, spill or contamination (such as stains on the soil strong petroleum odors, puddles of oil), you are required to notify the Division of Waste Management UST Section regional office immediately. Please refer to the enclosed brochure on home heating oil tanks for more information.

Although it is not a requirement to close old heating oil tanks, lending institutions are sometimes reluctant to make loans unless soil samples are collected from below the tank and are analyzed for possible contamination. If this type of information is required by a lending institution, we recommend that you retain a qualified professional (licensed geologist or professional engineer) to collect and analyze soil samples in the manner described below and to submit the sampling results to the lending institution in a report. Typically, a qualified professional can be found in the yellow pages of a telephone book under "Environmental Consultants." When choosing someone, we recommend getting several estimates and references.

We recommend the following sampling procedures. One soil sample should be collected from below the tank (near the bottom of the tank if it was closed-in-place) if it is less than 6 feet long and two samples if the tank is greater than 6 feet long. These samples should be taken no deeper than two feet into the native soil. In addition, one sample should be collected below the piping if the piping is 10 feet or greater in length. Again, this sample should be taken no deeper than two feet into the native soil. Samples should be analyzed for total petroleum hydrocarbons (TPH) using modified EPA Method 8015 (California GC-FID Method) with a 5030 and 3550 sample preparation. Sample results equal to or greater than 10 mg/kg (method detection limit) would be considered a level requiring notification to the Division of Waste Management UST Section.

In the event that you discover a leak, spill or possible contamination and it is necessary to perform some cleanup activities, financial assistance through the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (State Trust Fund) is available to owners of home heating oil tanks. A brochure describing the State Trust Fund program is also enclosed.

Should you have any questions or need further assistance, please do not hesitate to call UST Section central office at (919) 733-8486.

Sincerely,

Burrie vD. Boshoff, Chief
UST Section

Enclosures

Attachment 2

July 27, 1998

MEMORANDUM

TO: Regional UST Team Leaders

FROM: Burrie Boshoff

SUBJECT: Review of Low Risk Sites for Closure

The Legislature has expressed a real concern about our ability to close low risk underground storage tank (UST) sites. In order to address this concern, I need you to implement the following policy immediately.

Each staff member who currently reviews Comprehensive Site Assessment (CSA) reports will review three low risk reports per week with the objective to close out these sites. Sites with a pending real estate transaction will be given first priority followed by those sites requesting closure. Once the real estate transaction and closure requests have been reviewed, low risk sites in the files with a CSA submitted should be reviewed and a decision regarding the closure of the site should be made. If review of the file indicates that the site is improperly classified as low risk, the risk classification should be modified as necessary. Limited Site Assessment (LSA) reports should continue to be reviewed and proceed toward site closure.

It will also be necessary that the following items are tracked in each office so that we can respond to questions related to low risk sites.

- Number of LSAs submitted for discharges or releases reported before 1/2/98.
- Number of LSAs submitted for discharges or release reported on or after 1/2/98.
- Number of sites that only the Phase I of the LSA was required.
- Number of sites able to close after the Phase I LSA.
- Number of sites that a Phase II LSA was required.
- Number of sites able to close after the Phase II LSA.
- Number of sites classified as intermediate risk because of free product and no other conditions.
- Number of sites classified as intermediate risk because of GCLs and no other conditions.
- Number of sites that a CSA is required.

cc: Bill Meyer
Mike Kelly
Bill Reid
Ruth Strauss
Marcia Kremer

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT

NCDENR
JAMES B. HUNT JR.
GOVERNOR
WAYNE McDEVITT
SECRETARY
WILLIAM L. MEYER
DIRECTOR

Attachment 3

UST SECTION

SUBJECT: Residential Heating Oil Tanks

Dear Homeowner:

This is to inform you that home heating oil tanks are exempt from the technical criteria and standards that apply to commercial regulated underground storage tanks (USTs). If you are no longer using a home heating oil tank, you are not required under the federal or state regulations to close it (i.e., remove it from the ground or fill it with a solid inert material such as sand, and analyze soil samples for possible contamination). However, it is a good idea to empty the tank once it is no longer in use to limit the chances of a release. If you discover signs of a leak, spill or contamination (such as stains on the soil strong petroleum odors, puddles of oil), you are required to notify the Division of Waste Management UST Section regional office immediately. If you are responsible for the contamination, the regional office will provide you with the appropriate information on how to proceed. Please refer to the enclosed brochure on home heating oil tanks for more information.

In the event that you discover a leak, spill or possible contamination and it is necessary to perform some cleanup activities, financial assistance through the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (State Trust Fund) is available to owners of home heating oil tanks. A brochure describing the State Trust Fund program is also enclosed.

Should you have any questions or need further assistance, please do not hesitate to call UST Section central office at (919) 733-8486.

Sincerely,

Burrie vD. Boshoff, Chief
UST Section

Enclosures

401 OBERLIN ROAD, SUITE 150, RALEIGH, NC 27605
PHONE 919-733-4996 FAX 919-715-3605
AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER - 50% RECYCLED/10% POST-CONSUMER PAPER

What are the requirements if the leak is from an aboveground home heating oil tank?

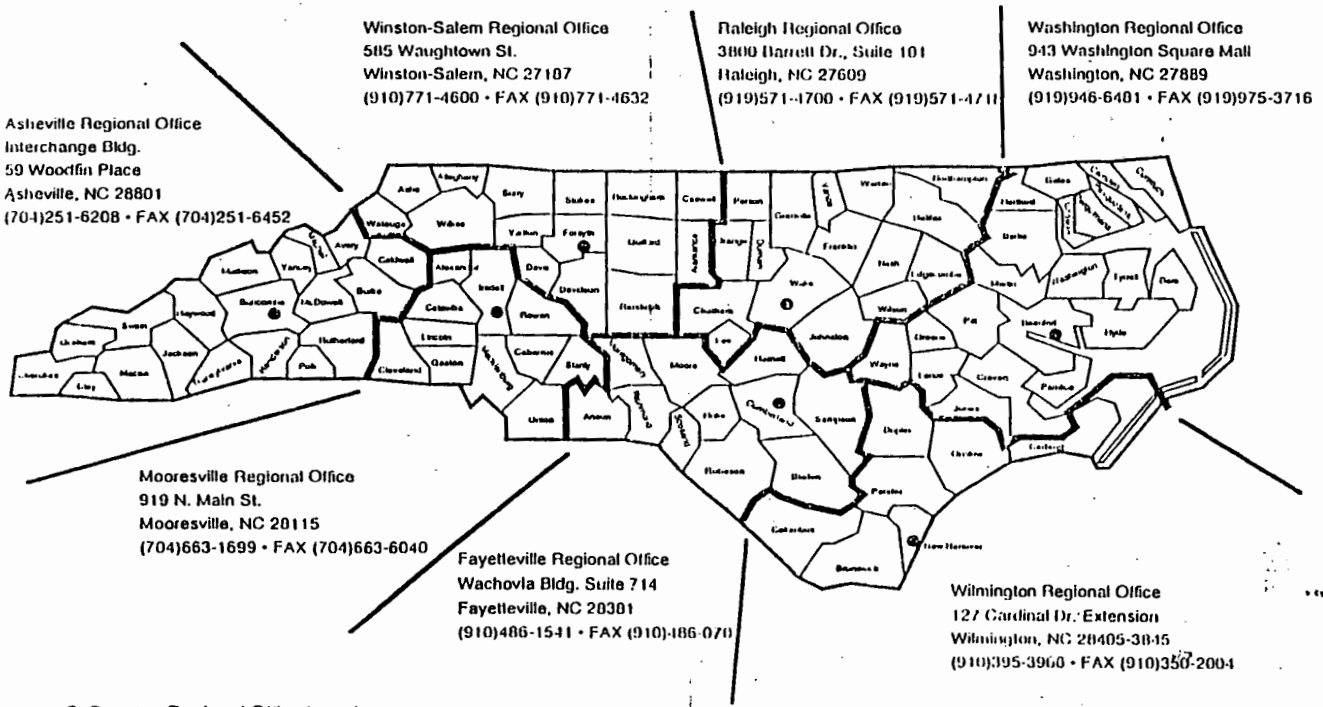
If a leak from an aboveground tank is discovered, it must be reported to your regional DWQ office immediately. If cleanup is required, your regional DWQ office will provide you with guidance about how to proceed. Unfortunately, North Carolina's cleanup fund does not cover releases from aboveground storage tanks.

Where do I go if I have more questions?

Please refer to the map below for telephone numbers and addresses of the DWQ regional offices. Ask to speak to someone in the Groundwater Section's UST program. You may also contact DWQ Central Office at:

DEHNR-UST
P.O. Box 29578
Raleigh, NC 27626-0578
919-733-3221

The purpose of this brochure is for general guidance. More specific information can be found in 15A NCAC 2L, G.S. 143-215.83-85, and the "Groundwater Section Guidelines for the Investigation and Remediation of Soil and Groundwater." Although this brochure only addresses home heating oil underground storage tanks, the same basic requirements apply to small (1,100 gallons or less) farm and residential motor fuel tanks.



● Denotes Regional Office Location

3/97

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Home-Heating Oil

UNDERGROUND STORAGE TANKS

N.C. Department of Environment, Health, and Natural Resources

Division of Water Quality
Groundwater Section

What kind of regulations apply to my home heating oil tank?

Home heating oil tanks are nonregulated, non-commercial underground storage tanks (USTs) and, therefore, are exempt from the "technical regulations" that apply to regulated USTs. Even though home heating oil tanks are exempt from these technical regulations, some groundwater regulations will apply if there is a leak or spill from your tank.

What do I do with a home heating oil tank that is no longer being used?

Home heating oil tanks are exempt from the "closure" requirements. ("Closure" of USTs means removing the contents, removing the tank from the ground or filling the tank with a solid, inert material, such as sand, and analyzing soil samples for any possible contamination.) Even though these closure requirements do not apply to home heating oil tanks, a tank owner is advised to empty a tank once it is no longer being used in order to limit the chances of a release (tanks should not be filled with water). Although it is not a requirement to remove old heating oil tanks, potential buyers are sometimes reluctant to purchase property with USTs; therefore, removal may be a good idea in the interests of resale.

If I choose to remove my home heating oil tank, what are the requirements?

Some local fire inspectors' offices require permits to remove USTs, so you should contact your local office prior to removal. You do not need to contact a North Carolina Division of Water Quality (DWQ) office unless you discover signs of a leak, spill, or contamination.

What do I do if I discover contamination?

If you discover signs of a leak, spill, or contamination such as stains on the soil, strong petroleum odors, puddles of oil, etc., your local DWQ regional office must be notified immediately. Please refer to the back of this brochure for telephone numbers and addresses of the DWQ regional offices. If you are responsible for the contamination, your local DWQ office will provide you with the appropriate information as to how to proceed.

Who is responsible for cleanup of contamination?

Primarily, the "statutory tank owner" is responsible for cleaning up the contamination. Who the "statutory tank owner" is depends upon when the tank was last used. If the UST has been used on or after November 8, 1984, then the current landowner can be considered the statutory tank owner. If the UST was taken out of use before November 8, 1984, then the last person who used that UST is still considered the tank owner (even if they no longer own the property). For example, if you bought a house with a home heating oil tank on it and that tank has not been used since the 1970's, you would not be considered the statutory tank owner (unless you used the tank). However, if that tank was taken out of use in 1985 (or anytime after November 8, 1984), you would be considered the tank owner (even if you never used it).

If I am responsible for cleaning up contamination caused by a home heating oil tank, what do I do after I report the contamination?

First of all, soil samples need to be taken to determine how much contamination is present. Typically, these samples need to be analyzed for total petroleum hydrocarbon (TPH) concentration. Groundwater samples may also need to be taken, especially if groundwater is close to the contaminated soil. These samples must be analyzed by a certified laboratory. To ensure that the sampling is completed according to DWQ guidelines, it is recommended that a professional consultant be retained. Depending upon the levels and extent of the contamination and depending upon the geology, further assessment of the site may be necessary. The DWQ regional office staff can be helpful in determining what further steps are needed (see map for addresses and telephone numbers). If further action is required, you will likely have to hire a professional to assess the site and clean up the contamination.

What kind of companies do this sort of work?

Many companies do environmental work. Typically, they can be found in the yellow pages of a telephone book under "Environmental Consultants." When choosing a company, we recommend getting several estimates and references. The DWQ does require that site assessments and cleanup work be conducted under the responsible charge of a licensed geologist or professional engineer.

How am I going to pay for this?

North Carolina has a Noncommercial Leaking Petroleum UST Cleanup Fund that will pay up to $1 million for reasonable and necessary costs directly related to the cleanup of a petroleum release from your UST. The cleanup fund will not pay for attorney fees, tank removal costs, or for excessive or unnecessary work. In the case of home heating oil tanks, this fund is available with a zero deductible to "statutory tank owners" and with a $5,000 deductible to landowners that do not meet the definition of an owner/operator. This fund does not cover aboveground storage tanks. Please refer to our "Cleanup Funds" brochure or call one of the DWQ offices for more information about this fund.

How to ap

- If a release is discovered, Trust Fund eligibility can be determined by submitting an **application form*** before submittal of the first reimbursement request.
- The **reimbursement request** must be accompanied by specific forms* and documentation of costs incurred during cleanup.

* *available from any DWQ office*

For more information

- contact your regional DWQ office (see map), or
- contact the DWQ Central Office at:

DENR-UST
P.O. Box 29578
Raleigh, NC 27626-0578
(919) 733-3221

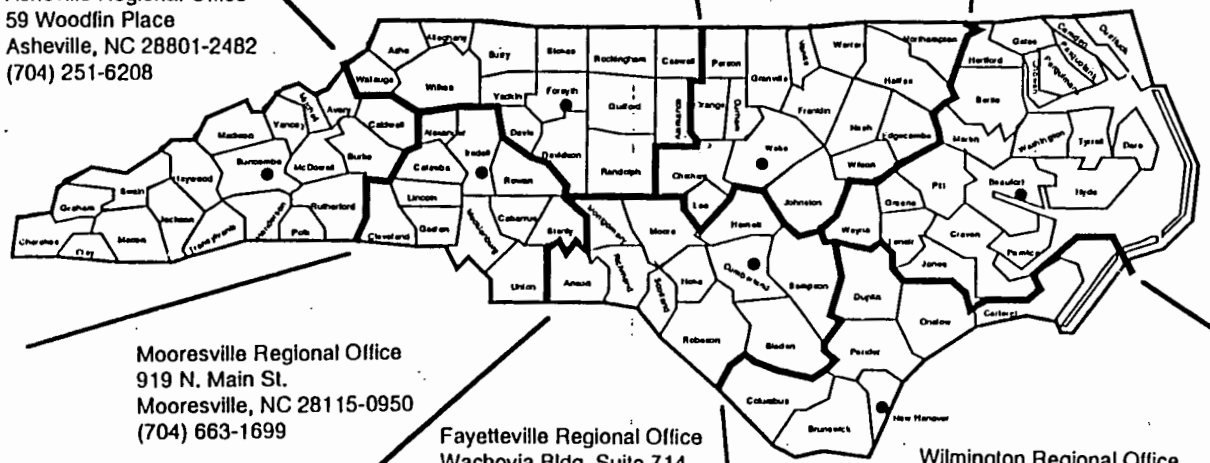
The purpose of this brochure is for general information. More specific information may be found in 15A NCAC 2P and G.S. 143-215.94A-N.

Winston-Salem Regional Office
585 Waughtown St.
Winston-Salem, NC 27107
(336) 771-4600

Raleigh Regional Office
3800 Barrett Dr.
Raleigh, NC 27609
(919) 571-4700

Washington Regional Office
943 Washington Square Mall
Washington, NC 27889-3314
(919) 946-6481

Asheville Regional Office
59 Woodfin Place
Asheville, NC 28801-2482
(704) 251-6208



Mooresville Regional Office
919 N. Main St.
Mooresville, NC 28115-0950
(704) 663-1699

Fayetteville Regional Office
Wachovia Bldg. Suite 714
Fayetteville, NC 28301-5094
(910) 486-1541

Wilmington Regional Office
127 Cardinal Dr. Extension
Wilmington, NC 28405-3845
(910) 395-3900

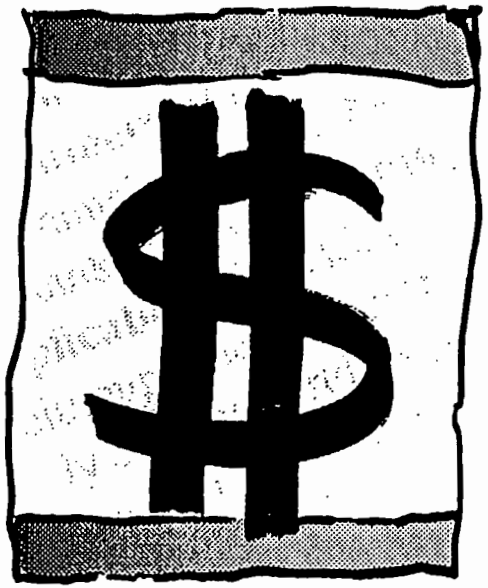
● Denotes Regional Office Location

2/98

1,500 copies of this public document were printed at a cost of $98.05 or $.065 per copy. February, 1998

THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK

Cleanup Funds



NCDENR

N.C. Department of Environment and Natural Resources

Division of Water Quality
Groundwater Section

Purpose of the Funds:

The UST funds provide reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from an underground storage tank. Two funds, the **Commercial Trust Fund** and the **Noncommercial Trust Fund**, have been established to reimburse tank owners, operators, and landowners for costs associated with cleanups.

Examples of commercial underground storage tanks:

- USTs containing petroleum products for resale.
- Farm or residential motor fuel tanks with a capacity greater than 1,100 gallons.
- Heating oil tanks greater than 1,100 gallons (unless they serve four or fewer households).

Examples of noncommercial underground storage tanks:

- Heating oil tanks with a capacity of 1,100 gallons or less.
- Heating oil tanks with a capacity greater than 1,100 gallons that serve one to four households.
- Farm or residential motor fuel tanks with a capacity of 1,100 gallons or less.

Eligibility for the Funds:

Owners, operators, and landowners may be eligible for the funds. The following is a list of some of the criteria that must be met for fund eligibility:*

- All **commercial tanks** must be **registered** and annual operating **fees** must be paid.
- The tanks must be in **compliance with all applicable UST rules.**
- Reimbursement from the Commercial Fund only applies to releases or discharges discovered on or after June 30, 1988.

* *This list is not inclusive. The only sure way to determine eligibility is to submit an application after a release is discovered.*

Amount the Funds will pay:

The Funds will pay up to $1.5 million for **reasonable and necessary costs directly related to the cleanup** of a release.* However, there are deductibles and there is a 20% co-payment for costs greater than $1 million.

* *Contact the central office State Trust Fund Group for Trust Fund Reasonable Rate information.*

Examples of what the Funds will not cover:

- Attorney fees.
- UST system replacement or removal.
- Work performed that is excessive or not necessary.
- Cleanup costs in excess of applicable deductibles that are covered by insurance policies.

Deductibles*:

Commercial Fund Deductibles :

- **$50,000** for leaks discovered **from June 30, 1988, until December 31, 1991.**
- **$20,000** for leaks discovered **from January 1, 1992, until December 31, 1993.**
- For leaks discovered **on or after** January 1, 1994:

(a) **$20,000** for **commercial heating oil USTs**** used on premises.

(b) **$20,000** for USTs that have installed leak detection, corrosion protection, and spill/overfill prevention prior to the occurrence of a leak.

(c) **$20,000** for existing USTs (those installed before December 22, 1988) **if** the DWQ received notification before January 1, 1994, that upgrade or closure work will begin before July 1, 1994, and be completed by December 31, 1994.

(d) **Up to $75,000** for all other commercial tanks (a $20,000 deductible plus 40 percent of the costs between $20,000 and $157,500).

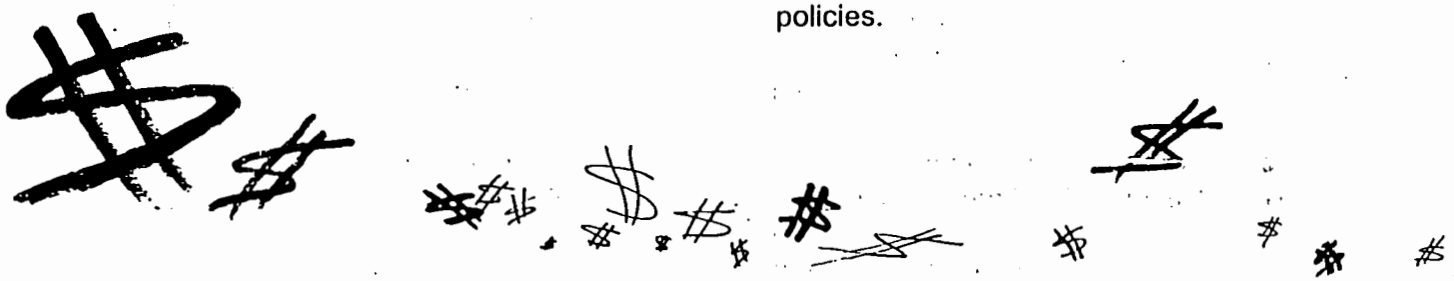
- **$100,000** deductible for third-party liability.

Noncommercial Fund Deductibles:

- **$0** deductible on cleanup costs.
- **$100,000** deductible on third party liability.

* *The deductible amounts listed assume that the release was reported immediately upon discovery as required by law.*

** *Owners/operators of commercial heating oil tanks must pay annual operating fees as specified in 15A NCAC 2P, however, all heating oil tanks are exempt from the UST technical requirements in 15A NCAC 2N.*



VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 9/10/98
Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry M Lancaster	DENR
Anne Coan	NC Farm Bureau Fed.
Susan Adkins	Bill Drafting, GA
Barrie Bishop	ABNL DWM UST.
V.L. Mud	Conservation Council of NC
Doug Howey	NCPMA
Gary Harris	NCPMA
Paul Wilmer	NCMBA
Mike Carpenter	NCMBA
David Meredith	NC State Grange
V L McBride	NCFA

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES 9/10/98
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Cook	Weyerhaeuser
R E McNair	Georgia-Pacific
R Rogers	DENR
Kelli Kulcsa	DuPont
D Ross	
David Knight	NC Sierra
Ed Rega	N.C. Assoc. of Co. Comm.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

October 8, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Thursday, October 8, at 9:00 a.m., in Room 643 of the Legislative Office Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bill was discussed and all distributed material as well as copies of the bill are attached:

HOUSE BILL 1480 - SWINE INTEGRATOR REGIST./EXTEND MORATORIA - Representative Watson, sponsor. George Givens of staff was recognized to explain the bill which would extend the moratorium by six months to now expire September 1, 1999. Mr. Givens also answered questions from committee members. After discussion, Senator Odom moved that the bill be given a favorable report. Motion passed.

There being no further business, the meeting was adjourned.

Senator Charles W. Albertson
Chairman

Julia Birdsong
Committee Clerk

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Thursday, October 8, 1998
9:00 a.m.
Room 643 - LOB

AGENDA

HB 1480 SWINE INTEGRATOR REGIST./EXTEND MORATORIA.
Representative Watson

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Thursday, October 8, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#1) **1480** SWINE INTEGRATOR REGIS./EXTEND MORATORIA.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1480*
Committee Substitute Favorable 9/16/98

Short Title: Swine Integrator Regist./Extend Moratoria. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REGISTRATION OF SWINE OPERATION INTEGRATORS BY SWINE GROWERS, TO EXTEND BY SIX MONTHS THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS AND ON LAGOONS AND ANIMAL WASTE MANAGEMENT SYSTEMS FOR SWINE FARMS, AND TO CLARIFY EXCEPTIONS TO THE STATEWIDE MORATORIUM.

The General Assembly of North Carolina enacts:

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

"**§ 143-215.10H. Swine integrator registration.**

(a) Definitions. -- As used in this section:

(1) 'Grower' means a person who holds a permit for an animal waste management system under this Part or Part 1 of this Article for a swine farm, or who operates a swine farm that is subject to an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F.

(2) 'Swine farm' has the same meaning as in G.S. 106-802.

(3) 'Swine operation integrator' or 'integrator' means a person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the

animals. An ownership interest includes a right or option to purchase the animals.

(b) Registration Required. -- As part of an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F, the Department shall require a grower to register any swine operation integrator with which the grower has a contractual relationship to raise swine. The registration shall be in writing and shall include only:

(1) The name of the owner of the swine farm.
(2) The mailing address of the owner of the swine farm.
(3) The physical location of the swine farm.
(4) The swine farm facility number.
(5) A description of the animal waste management system for the swine farm.
(6) The name and address of the grower, if different from the owner of the swine farm.
(7) The name and mailing address of the integrator.

(c) Notice of Termination or New Relationship. -- If the swine operation integrator removes all animals from a swine farm or terminates the integrator's relationship with the swine farm, the grower shall notify the Department of the termination or removal within 30 days. If the grower terminates the grower's relationship with the integrator or enters into a relationship with a different integrator, the grower shall notify the Department of the termination or new relationship within 30 days.

(d) Disclosure of Violations. -- The Department shall notify a swine operation integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with the Department. A notice of deficiency or violation of any law or rule governing an animal waste management system is a public record within the meaning of G.S. 132-1 and is subject to disclosure as provided in Chapter 132 of the General Statutes."

Section 2. Section 1.1 of S.L. 1997-458 reads as rewritten:

"Section 1.1. (a) Moratorium Established. -- As used in this ~~section, 'swine~~ section:

(1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. ~~As used in this section, 'animal~~
(2) 'Animal waste management system' has the same meaning as in G.S. 143-215.10B.
(3) 'Anaerobic lagoon' means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.
(4) 'Anaerobic process' means a biological treatment process that occurs in the absence of dissolved oxygen.

North Carolina General Assembly
Legislative Services Office

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Administrative Division
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16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

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

MEMORANDUM

October 8, 1998

TO: Senate Committee on Agriculture, Environment, and Natural Resources

FROM: Rick Zechini, Committee Counsel
Jeff Hudson, Committee Counsel
George F. Givens, Committee Counsel

SUBJECT: House Bill 1480 (Swine Integrator Register Growers), 2nd Edition

Background

House Bill 1480 (Swine Integrator Register Growers) was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission (ERC). Its companion bill, Senate Bill 1302 (Swine Integrator Register Growers), was introduced in the Senate by Senator Fountain Odom.

Section 10.2 of S.L. 1997-458 directed the Department of Environment and Natural Resources (DENR) to recommend a system of civil penalties applicable to integrators of swine operations. DENR submitted two alternative proposals at the May 4, 1998 meeting of the ERC. Each proposal included a registration requirement for integrators as well as civil penalties and liability for integrators whose growers commit violations. The ERC opted to include in Senate Bill 1302 and House Bill 1480 only the requirement that integrators register any growers with which they have a contractual relationship to raise swine.

A House Environment Committee Substitute modified the registration requirement by placing the responsibility for registration on the grower. In addition, the House Environment Committee Substitute added a ten month extension of the statewide and Moore County moratoria on the construction or expansion of swine farms. After the House Environment Committee Substitute was adopted, it was amended to shorten the moratoria extension to six months and to list the specific information required for integrator registration.

Brief Summary

House Bill 1480 (Swine Integrator Register Growers), 2nd Edition requires growers to register with DENR any swine operation integrator with which the grower has a contractual relationship to raise swine. DENR must notify an integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with DENR. The bill also extends by six months the moratoria on the construction or expansion of swine farms. Furthermore,

the bill amends two exemptions to the statewide moratorium that allow the Environmental Management Commission, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, to issue a permit for the construction or expansion of an animal waste management system that represents either a candidate for research or a proven technology.

Detailed Summary

Section 1 provides the following definitions:

- "Grower" means a person who holds a permit for an animal waste management system, or whose swine farm is subject to an operations review or an inspection.
- "Swine farm" has the same meaning as in G.S. 106-802, which is a tract of land devoted to raising 250 or more animals of the porcine species.
- "Swine operation integrator" or "integrator" means a person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the animals. An ownership interest includes a right or option to purchase the animals.

Section 1 requires, as part of an operations review or an inspection, a grower to register any swine operation integrator with which the grower has a contractual relationship to raise swine. The registration must be in writing and must include:

- The name of the owner of the swine farm
- The mailing address of the owner of the swine farm
- The physical location of the swine farm
- The swine farm facility number
- A description of the animal waste management system for the swine farm
- The name and address of the grower, if different from the owner of the swine farm
- The name and mailing address of the integrator

If the integrator removes all animals from a swine farm, the integrator's relationship with the swine farm is terminated, or the grower enters into a relationship with a different integrator, the grower must notify DENR of the termination or new relationship within 30 days. Section 1 also requires DENR to notify an integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with DENR. In addition, a notice of deficiency or violation of any law or rule governing an animal waste management system is a public record within the meaning of G.S. 132-1 and is subject to disclosure as provided in Chapter 132 of the General Statutes.

Section 2 extends the statewide moratorium on the construction or expansion of swine farms and lagoons and animal waste management systems for swine farms to September 1, 1999. The moratorium began on March 1, 1997 and is currently set to expire March 1, 1999. The moratorium does not prohibit:

- Construction to repair or replace a component of an existing swine farm or lagoon *(current law)*
- Construction or expansion to meet the projected population or design capacity or to comply with animal waste management rules *(current law)*
- Construction or expansion if the person undertaking the construction has been issued a permit for that construction prior to August 27, 1997 *(current law)*
- Construction or expansion if, prior to March 1, 1997, the person undertaking the construction laid a foundation for the component being constructed, entered into a bona fide written contract for construction, or was approved for a line of credit for the construction and obligated or expended funds from the line of credit *(current law)*

- Construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements set out below, and is designed to be the subject of a research project. The Environmental Management Commission (EMC) shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if it determines after consultation with the Animal and Poultry Waste Management Center of North Carolina State University that additional research is necessary to evaluate whether the animal waste treatment system will:
  - Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff
  - Substantially eliminate atmospheric emissions of ammonia
  - Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located
  - Substantially eliminate the release of disease transmitting vectors and airborne pathogens
  - Substantially eliminate nutrient and heavy metal contamination of soil and groundwater

  (replaces current law)
- Construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment and does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements set out below. The EMC shall act on all permits so as to prevent violation of water quality standards due to the cumulative impacts of permit decisions and all permit decisions must require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized. The EMC shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if it determines after consultation with the Animal and Poultry Waste Management Center of North Carolina State University that the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the swine farm for at least a year and that sufficient data exists to establish that the animal waste management system will:
  - Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff
  - Substantially eliminate atmospheric emissions of ammonia
  - Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located
  - Substantially eliminate the release of disease transmitting vectors and airborne pathogens
  - Substantially eliminate nutrient and heavy metal contamination of soil and groundwater

  (replaces current law)

Section 2 also provides that this section shall not be construed to obligate the EMC or DENR to adopt temporary or permanent rules to implement this section. In addition, the EMC and DENR are required to implement the provisions of this section by evaluating each application for a permit for an animal waste management system on a case-by-case basis. Furthermore, a decision of the EMC or DENR under this section is subject to administrative and judicial review.

Section 3 extends to September 1, 1999 the moratorium on the construction or expansion of swine farms or lagoons in any county in the State:

- That has a population of less than 75,000
- In which there is more than one hundred fifty million dollars ($150,000,000) of expenditures on travel and tourism, and
- That is not in the coastal area

Effective September 1, 1999, animal waste management systems in counties meeting the above criteria may only be permitted under an individual permit. The moratorium began on March 1, 1997 and is currently set to expire March 1, 1999. The exemptions listed in Section 2 of this act do not apply to the moratorium extended by Section 3.

Section 4 provides that Section 1 becomes effective January 1, 1999. All other sections of this act become effective when this act becomes law.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 10/8/98

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Molly Diggins	NC Sierra Club
David Knight	NC Sierra Club
Dan Whittle	EDF
Joe Rudek	EDF
Tom Bean	NCCWF
Nat Mund	Conservation Council of NC
Jane Preyer	NC Environmental Defense Fund
Doug Rader	NCEDF
Marta Brown	NC Environmental Defense Fund
Melody Scott	NC Environmental Defense Fund 2500 Blue Ridge Rd – Raleigh NC 27607
Matt Rossiter	NC EDF

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Reed	NC Council of Churches
Stan Goff	Raleigh, NC
Maryjo Loftin	Citizen, Duplin County 134 Pecan Place Lane Mt. Olive NC 28365
R. ROGER	DENR
Laura DeVito	DENR
Eben Watson	Rep. Watson Office
Mark Benson	Capital Group

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colon H. Sullins	DENR/DWQ
DENNIS RAMSEY	" "
Tommy Stevens	" "
BILL RAUFER	PORK98, 103 Montgomery St Raleigh 27607
G Markham	EJHS
Cam Cover	BPM HL
Jo Hardesty	NCPC
Lu-Ann Coe	fff
Roger Bone	Bone + Assoc.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee

(DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Walter Cherry	NC Pork Council
Steve Woodson	NC Farm Bureau Federation
Andy Romanet	N.C.A.M.
Jim Blackburn	N.C. Association of County Commissioners
Gene Upchurch	CPdC
Kim Smith	
Bill Scoggin	NC Bar Assoc
Natalie Hawkins	NC Agribusiness Council
Michelle Cook	Weyerhaeuser
Don Butler	Carroll's Foods
C. Parker	Bone & Assoc.

MINUTES

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

October 27, 1998

The Senate Agriculture/Environment/Natural Resources Committee met on Tuesday, October 27, at 11:00 a.m., in Room 1124 of the Legislative Building. Senator Albertson, chairman, presided and there were fourteen committee members present.

The following bills were discussed and all distributed material as well as copies of the bills are attached:

HOUSE BILL 1402 - DISAPPROVE NEUSE RIVER BASIN RULE - Representative Creech, sponsor, was recognized to explain the bill. There was a proposed committee substitute, and Senator Odom moved that it be adopted for discussion purposes. Motion passed. George Givens of staff explained the changes that appeared in the PCS. Senator Wellons moved that the proposed committee substitute be given a favorable report, unfavorable as to bill, with a recommended referral to Finance. Motion carried.

HOUSE BILL 1472 - AGENCY RECEIPTS FOR RECYCLING - Representative Hill, sponsor, was recognized and he asked George Givens of staff to explain the bill. There was proposed committee substitute before the committee, and Senator Weinstein moved that it be adopted for discussion purposes. Motion carried. After discussion, Senator Odom moved that the proposed committee substitute be given a favorable report, unfavorable as to bill. Motion carried.

There being no further business, the meeting was adjourned.

Charles W. Albertson
Senator Charles W. Albertson
Chairman

Julia Birdsong
Julia Birdsong
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Albertson, Chairman

Tuesday, October 27, 1998

SENATOR ALBERTSON,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1402** DISAPPROVE/REVISE NEUSE RIVER BASIN RULE

Draft Number:	PCS2433
Sequential Referral:	NONE
Recommended Referral:	FINANCE
Long Title Amended:	YES

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1472** AGENCY RECEIPTS FOR RECYCLING

Draft Number:	PCS1624
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	YES

TOTAL REPORTED: 2

Committee Clerk Comment:

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE

Tuesday, October 27, 1998
11:00 a.m.
Room 1124 - LOB

AGENDA

HB 1402	DISAPPROVE NEUSE RIVER BASIN RULE Representative Creech
HB 1472	AGENCY RECEIPTS FOR RECYCLING Representative Hill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98
Committee Substitute #2 Favorable 8/24/98
Proposed Senate Committee Substitute H1402-PCS2433-RT/SB011

Short Title: Neuse Buffers Rules/Other Env. Amends. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY,

TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT PART I OF THIS ACT; TO AUTHORIZE TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES; TO PROVIDE THAT FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM OR OTHER AVAILABLE FUNDS MAY BE USED TO PAY ASSISTED FARMER'S SHARE OF THE COST OF CERTAIN PRACTICES UNDER STATE'S AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL; AND TO REVISE REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. DISAPPROVE/REVISE NEUSE RIVER BASIN RULE

Section 1.1. **Definitions.** -- Unless otherwise required by the context, the following definitions apply throughout this Part:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 1.2 of this act.

Section 1.2. **Permanent rule disapproved; temporary rule continued in effect.** -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 1.8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 1.3 of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98
Committee Substitute #2 Favorable 8/24/98

Short Title: Disapprove/Revise Neuse River Basin Rule. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF

THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. **Definitions.** -- Unless otherwise required by the context, the following definitions apply throughout this act:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 2 of this act.

Section 2. **Permanent rule disapproved; temporary rule continued in effect.** -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 3 of this act.

Section 3. **Implementation of the temporary rule: determination of surface waters; forest vegetation defined.** -- (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or

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October 27, 1998

MEMORANDUM

To: Senate Committee on Agriculture, Environment, and Natural Resources

From: Jeff Hudson, Committee Counsel
George F. Givens, Committee Counsel

Regarding: Proposed Committee Substitute for House Bill 1402 (Disapprove/Revise Neuse River Basin Rule)

Proposed Committee Substitute for House Bill 1402 (Disapprove/Revise Neuse River Basin Rule)

PART I. DISAPPROVE/REVISE NEUSE RIVER BASIN RULE

Section 1.1 provides definitions that apply throughout Part I of this act.

Section 1.2 disapproves the Neuse Buffer Rule as a permanent rule but provides that it will remain in effect as a temporary rule until the revisions to the temporary rule required by Section 1.8 become effective. Section 1.2 also directs the Environmental Management Commission (Commission) and the Department of Environment and Natural Resources (Department) to implement the temporary Neuse Buffer Rule in accordance with the requirements of Section 1.3.

Section 1.3 provides that for purposes of implementing the temporary Neuse Buffer Rule, the existence of surface water on a particular parcel of land will be presumed if the surface water appears on either the most recent soil survey maps or United States Geological Survey topographic maps. Any question as to the accuracy of these maps will be determined by the Director of the Division of Water Quality in the Department (Director). The Director's determination will be subject to both administrative and judicial review. In addition, for purposes of the temporary Neuse Buffer Rule, Section 1.3 defines "forest vegetation" as vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 1.4 directs the Commission to adopt rules that provide alternatives to Neuse Buffer Rule compliance for persons who demonstrate both that they have attempted to avoid and minimize riparian buffer loss and that there is no practical alternative to this loss. These alternatives will include:

- Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund
- Donation of real property or an interest in real property to the Department, a unit of local government, or a private nonprofit conservation organization if the property is a riparian buffer or potential riparian buffer that provides water quality protection equivalent to or greater than that provided by the lost riparian buffer and the donee agrees to maintain the property as a riparian buffer
- Establishment, restoration, or enhancement of a riparian buffer not protected by the Neuse Buffer Rule

Compensatory mitigation is only available for the loss of a riparian buffer along an intermittent stream and must be conducted within the Neuse River Basin. This section also directs the Commission to establish a compensatory mitigation fee schedule based on the area of a riparian buffer that is destroyed and the cost to provide equivalent or greater water quality protection.

Section 1.5 establishes the Riparian Buffer Restoration Fund (Fund) to accept compensatory mitigation fees and monetary contributions that promote the restoration, enhancement, or creation of riparian buffers. The Fund will be administered by the Division of Water Quality in the Department. Monies may only be expended from the Fund to restore, acquire, create, enhance, and maintain riparian buffers to offset water quality benefits lost due to the loss of buffers. A compensatory mitigation fee paid into the Fund must be used for a project in the same river basin as the riparian buffer that is lost.

Section 1.6 directs the Commission to adopt rules that provide for the delegation of the implementation and enforcement of the Neuse River Basin riparian buffer requirements to units of local government that have the power to regulate land use.

Section 1.7 prohibits the Commission and Department from applying the temporary Neuse Buffer Rule to development with:

- Statutory vested rights established prior to July 22, 1997
- Common law vested rights established prior to the date Part I of this act becomes effective if, prior to July 22, 1997, the Commission has issued a certification pursuant to its authority to administer the federal Clean Water Act

This section also prohibits the Commission from adopting rules that confer or restrict a vested right to undertake or complete development. Finally, Section 1.7 states the intent of the General Assembly that the vesting provisions of this section apply only to the subject matter of Part I of this act and do not establish a precedent as to vesting under zoning, land-use planning, or other environmental programs.

Section 1.8 directs the Commission to revise the temporary Neuse Buffer Rule by:

- Establishing a scientifically valid, easily understandable, and cost-effective method for determining the presence of surface waters on a particular parcel of land
- Establishing methods for measuring riparian buffer zones appropriate to the different regions of the Neuse River Basin
- Determining, based on drainage area, those segments of intermittent streams to which the riparian buffer requirements do not apply
- Defining forest vegetation
- Establishing exemptions and uses that will be allowed within a riparian area
- Establishing criteria to determine whether practical alternatives exist to the loss of the riparian buffer

Section 1.8 also restates current law under the Administrative Procedures Act that requires the Commission to set out in rule all provisions that directly or substantially affect the procedural or substantive rights or duties of third parties. Finally, Section 1.8 directs the Commission to proceed with permanent rulemaking once the temporary Neuse Buffer Rule has been revised and provides that the temporary Neuse Buffer Rule will remain in effect until the permanent rule becomes effective.

Section 1.9 directs the Commission to review:

- Implementation of the Neuse River Basin Nutrient Sensitive Waters Management Strategy
- Progress in achieving the 30% nitrogen reduction goal and other milestones related to Neuse River water quality
- Impact of the implementation of the Neuse River Nutrient Sensitive Waters Management Strategy on the regulated community

Section 1.9 also directs the Commission to report the results of its review, including any recommendations, to the Environmental Review Commission by December 1, 2000 and December 1, 2001.

Section 1.10 directs the Commission to implement the temporary Neuse Buffer Rule and revise the permanent rule with the assistance of a stakeholder advisory committee composed of 23 appointees and representatives as follows:

1. An at large member to serve as Chair, appointed by the Secretary
2. A member of the Commission, appointed by the Chair of the Commission
3. The Director of the Division of Water Quality
4. Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers
5. NC Association of Soil and Water Conservation Districts
6. NC Association of County Commissioners
7. NC League of Municipalities
8. Water Resources Research Institute
9. Upper Neuse River Basin Association
10. Lower Neuse River Basin Association
11. NC Association of Environmental Professionals
12. NC Chapter of the American Planning Association
13. NC Aggregates Association
14. NC Citizens for Business and Industry
15. NC Farm Bureau Federation
16. NC Forestry Association
17. NC Home Builders Association
18. A commercial land developer, appointed by the Secretary
19. Conservation Council of North Carolina
20. NC Environmental Defense Fund
21. Neuse River Foundation
22. NC Chapter of the Sierra Club
23. NC Wildlife Federation

Section 1.11 requires the Director of the Division of Land Resources and any local government to which implementation of the State program has been delegated to disapprove an erosion control plan if the plan would result in a violation of Commission rules to protect riparian buffers along surface waters.

Section 1.12 authorizes the Environmental Management Commission and the Sedimentation Control Commission to adopt temporary rules to implement Part I of this act until October 1, 1999. This section further states that it is the intent of the General Assembly that both commissions adopt all temporary rules necessary to implement Part I of this act by April 1, 1999.

Section 1.13 authorizes the Department to accept donations of interests in real property if the property is a riparian buffer or potential riparian buffer that will provide water quality protection.

Section 1.14 directs the Commission to establish a goal for the maintenance and restoration of riparian buffers that is consistent with the 30% nitrogen reduction goal for the Neuse River estuary established by the General Assembly during the 1996 Regular Session.

Section 1.15 requires the Environmental Management Commission and the Department to report to the Environmental Review Commission on progress in implementing Part I of this act by January 15, 1999 and by April 1, 1999. The reports will include any proposed legislation recommended by the Environmental Management Commission or the Department as necessary or desirable to achieve the purposes of Part I of this act, the purposes of the Neuse River Nutrient Sensitive Waters Management Strategy, or to improve water quality in the Neuse River Basin.

Section 1.16 repeals a reporting requirement that is replaced by the reporting requirements established by Sections 1.9 and 1.15.

Section 1.17 makes Part I effective when this act becomes law.

PART II. TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES

Section 2.1 authorizes the Coastal Resources Commission to adopt temporary rules governing coastal energy facilities until July 1, 2005.

Section 2.2 makes Part II effective retroactively to September 25, 1998.

PART III. USE OF FEDERAL CONSERVATION RESERVE ENHANCEMENT PROGRAM FUNDS

Section 3.1 provides that for nonpoint source pollution control practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the Agriculture Cost Share Program will be limited to 75% of the cost of the conservation practice. The remainder of the cost will be paid from the Conservation Reserve Enhancement Program, other federal or State funds, or the assisted farmer.

Section 3.2 makes Part III effective when this act becomes law.

PART IV. REVISE REPORTING REQUIREMENTS

Section 4.1 requires the Department to submit quarterly reports to the Environmental Review Commission and the Fiscal Research Division on the compliance with and enforcement of water quality laws for facilities that discharge to surface waters.

Section 4.2 codifies the requirement that the Department submit quarterly reports to the Environmental Review Commission and the Fiscal Research Division on the compliance with and enforcement of water quality laws for animal waste management systems.

Sections 4.3 and 4.4 repeal existing reporting requirements that are duplicative of the reporting requirement codified by Section 4.2.

Section 4.5 amends Section 12.5 of S.L. 1997-458 (House Bill 515, Clean Water/Environmentally Sound Policy Act). Section 12.5, as enacted, required the Utilities Commission, the Local Government Commission, and the Environmental Management Commission to examine issues relating to publicly owned treatment works that persistently fail to comply with federal and State laws for the protection of public health and the environment and to jointly report any findings and recommendations to the 1998 Regular Session of the 1997 General Assembly. This study was not conducted and no report was submitted. Section 4.5 revises Section 12.5 to require the Department to conduct the study and to report its findings and recommendations to the Environmental Review Commission on or before October 1, 1999.

Section 4.6 makes Part IV effective when this act becomes law.

PART V. MISCELLANEOUS PROVISIONS

Section 5.1 explains that the headings in this act are only a convenience for the reader.

Section 5.2 is a severability clause.

Section 5.3 makes Part V effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1472*
Committee Substitute Favorable 9/24/98
Proposed Senate Committee Substitute H1472-PCS1624-RT-002

Short Title: Agency Recyc. Receipts/ Family Farms Study. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE AGENCIES TO RETAIN RECEIPTS FROM THE SALE OF RECYCLABLE MATERIALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, AND TO CREATE THE COMMISSION ON SMALL FAMILY FARM PRESERVATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.02 reads as rewritten:

"**§ 143-64.02. Definitions.**

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

(3) 'Recyclable material' means a recyclable material, as defined in G.S. 130A-290, that the Secretary of Administration determines, consistent with G.S. 130A-309.14, to be a recyclable material."

Section 2. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05. ~~Warehousing, transfer, etc., charges.~~ Service charges for disposal of surplus property and recyclables; use of receipts from sale of surplus property and recyclable material.**

(a) The State agency for surplus property may assess and collect a service charge ~~charges or fees~~ for the acquisition, receipt, warehousing, ~~distribution~~ distribution, or transfer of any State surplus ~~property.~~ property and for the transfer or sale of recyclable material.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and ~~agencies,~~ agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated ~~for,~~ for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State ~~Treasurer, Nontax Revenues.~~ Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

Section 3. The Commission on Small Family Farm Preservation is created in the General Assembly. The Commission shall study:

(1) Land-use and population trends in North Carolina.

(2) The causes of the declining number of small family farms in the State.

(3) The influence of federal and State taxes in the conversion of small family farms to nonagricultural uses.

(4) Voluntary incentives and voluntary options to preserve small family farms as well as enhance their economic viability and their use of environmentally sustainable agriculture.

(5) The feasibility and desirability of using various farmland preservation mechanisms, including: purchase or lease of development rights, land-use tax credits, estate and gift tax exemptions, comprehensive land-use plans, redevelopment of urban areas and density development to eliminate duplication of infrastructure, cluster zoning, agricultural protection zoning, limits

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1472*
Committee Substitute Favorable 9/24/98

Short Title: Agency Receipts for Recycling. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE AGENCIES TO RETAIN RECEIPTS FROM THE SALE OF RECYCLABLE MATERIALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.02 reads as rewritten:

"**§ 143-64.02. Definitions.**

As used in Part 1 of this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

(3) 'Recyclable material' means a recyclable material, as defined in G.S. 130A-290, that the Secretary of Administration determines, consistent with G.S. 130A-309.14, to be a recyclable material."

Section 2. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05. ~~Warehousing, transfer, etc., charges.~~ Service charges for disposal of surplus property and recyclables; use of receipts from sale of surplus property and recyclable material.**

(a) The State agency for surplus property may assess and collect a service charge ~~charges or fees~~ for the acquisition, receipt, warehousing, ~~distribution~~ distribution, or transfer of any State surplus ~~property.~~ property and for the transfer or sale of recyclable material.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and ~~agencies,~~ agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated ~~for,~~ for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State ~~Treasurer, Nontax Revenues.~~ Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

Section 3. This act becomes effective 1 July 1998.

North Carolina General Assembly
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Memorandum

October 27, 1998

TO: Senate Committee on Agriculture and Environment

FROM: Hannah I. Holm, Committee Staff

SUBJECT: House Bill 1472 (Agency Receipts for Recycling), Second Edition

House Bill 1472 was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission. Its companion bill, Senate Bill 1314 (Agency Receipts for Recycling), was introduced in the Senate by Senator Eleanor Kinnaird.

Currently, revenues generated by State agencies through the sale of recyclable material must be returned to the General Fund under the same laws that govern revenues from the sale of other surplus State property. House Bill 1472 amends the General Statutes governing State surplus property to allow State agencies to retain funds generated through the sale of recyclable material. The funds are to be used by the agencies to defray the costs of their recycling programs.

Section 1 adds the definition of "Recyclable material" to Article 3A (Surplus Property) of Chapter 143 of the General Statutes.

Section 2 allows the State agency for surplus property to collect a service charge for the transfer or sale of recyclable material. Having paid this charge, the department, institution or agency recycling the material may retain the revenues from their sale or transfer and use the revenues to defray recycling costs. The Secretary of Administration is directed to 1) determine which contracts agencies may initiate for the transfer or sale of recyclable material and 2) adopt rules governing the conditions and procedures by which agencies may retain funds generated through the transfer or sale of recyclable material.

Section 3 makes this act effective July 1, 1998.

The Second Edition of House Bill 1472 modified the bill as introduced by 1) replacing the definition of "recyclable materials and supplies" with "recyclable material" as defined in G.S. 130A-290 and determined by the Secretary of Administration; 2) allowing the State agency for surplus property to collect a service charge for transferring and selling recyclable material; 3) directing the Secretary of Administration to determine which contracts agencies may initiate for the transfer or sale of recyclable material, and 4) directing, rather than authorizing, the Secretary of Administration to adopt procedural rules by which agencies may retain revenues from the transfer or sale of recyclable material.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES — 10/27/98

Name of Committee — (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Benn	NCWF
Mike Carpenter	NCHBA
Paul Wilms	NCHBA
Kim Smith	NCLM
Cam Cover	~~REC~~ BPMHL
Martha Glass	DOA
PB	NCFB
Michelle Cook	Weyerhaeuser
Bob Slocum	NC Forestry Assn.
Lisa Martin	Upper Neuse River Basin Assn.
Fred Allen	NC Aggregates Assn.

VISITOR REGISTRATION SHEET

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
Name of Committee (DATE)

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura Hartsell	MCC
Laura DeVito	DENR
Ruth Sappri	DOT
Bobby Bryan	RRC
Henry McKinnon	DENR
Coleen Sullins	DWQ
Tommy Stevens	DWQ
Crissy Parker	Bone & Associates
Steve Woodson	NC Farm Bureau Federation
Greg Thorpe	DWQ
Andy Romant	N.C.L.M.

1997

SENATE CHILDREN & HUMAN RESOURCES COMMITTEE

MINUTES

Children & Human Resources
Committee Members

Chairman	Senator Jeanne Lucas
Vice Chairman	Senator Charlie Dannelly
Vice Chairman	Senator Eleanor Kinnaird
Vice Chairman	Senator William Martin of Guilford
Vice Chairman	Senator Leslie Winner

Ranking Minority Member Senator James Forrester

Members

Senators Austin Allran
R. L. Clark,
Betsy Cochrane
Roy A. Cooper III
Don W. East
Virginia Foxx
John H. Kerr III
Kenneth Moore
Jim W. Phillips
William R. Purcell
Ed W. Warren
Allen H. Wellons

NORTH CAROLINA GE[illegible]L ASSEMBLY
COMMITTEE SUM[illegible] REPORT

1997-98 Regular Session — SENATE: CHILDREN & HUMAN RESOURCES — Valid Through 21-NOV-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 28	BAKER	DSS BOARD CHANGE	*R -CH. SL 97-0135	03-10-97	05-15-97
H 77	HOWARD	DISSOLVE CERTAIN MENTAL HEALTH AUTH	R -CH. SL 97-0007	02-26-97	03-12-97
H 81=	CLARY	RESIDENCY REQ/SPECIAL ASSISTANCE	*R -CH. SL 97-0210	03-13-97	04-16-97
H 143=	WILSON G	ADULT CARE HOMES ANNUAL REPORTING	*R -CH. SL 97-0073	03-11-97	04-09-97
H 153=	EASTERLING	DEPENDENT JUVENILE DEFINITION	R -CH. SL 97-0113	03-20-97	05-14-97
H 165=	REDWINE	LODGING ESTABLISHMENTS/SANITATION	*S -RE-REF COM ON CH&HUMRS	05-06-97	05-14-97
H 165=	REDWINE	LODGING ESTABLISHMENTS/SANITATION	*S -RE-REF COM ON CH&HUMRS	05-15-97	
H 186=	MITCHELL	FOSTER CARE CRIMINAL CK. CORRECTION	S -REF TO COM ON CH&HUMRS	03-26-97	
H 303	ALDRIDGE	BAN PARTIAL-BIRTH ABORTIONS	*S -REF TO COM ON CH&HUMRS	05-06-97	
H 327	MITCHELL	AREA MENTAL HEALTH BD./APPT.	S -REF TO COM ON CH&HUMRS	04-02-97	
H 363	GARDNER	CHILD SUPPORT OPTIONS/FEES	*R -CH. SL 97-0223	04-07-97	05-21-97
H 455=	DOCKHAM	GLAUCOMA PROGRAM REPEALED	*R -CH. SL 97-0137	04-17-97	05-21-97
H 456=	DOCKHAM	REG DEEDS - NO ABUSE INFO.	R -CH. SL 97-0136	04-29-97	05-21-97
H 536	WILSON C	ABORTION/RIGHT TO KNOW	*S -REF TO COM ON CH&HUMRS	05-06-97	
H 564	GARDNER	SUPERVISING DENTAL HYGIENISTS	*S -REF TO COM ON CH&HUMRS	05-06-97	
H 896	GARDNER	CHILD WELFARE CHANGES	*R -CH. SL 97-0390	05-06-97	07-24-97
H 897	MCCOMAS	NURSING/REST HOME ADV. COMM.APPTS.	*R -CH. SL 97-0176	05-06-97	05-28-97
H 948	GARDNER	PHARMACY REHABILITATION PROGRAM	R -CH. SL 97-0177	05-06-97	05-28-97
H 949=	GARDNER	IMPROVE CHILD PROTECTION/RECORDS	*R -CH. SL 97-0459	08-07-97	08-13-97
H1051	MILLER G	ORGAN DONATION/PROCUREMENT	*R -CH. SL 97-0192	05-06-97	05-29-97
S 44=	LUCAS	GRANDPARENT VISITATION	S -REF TO COM ON CH&HUMRS	02-04-97	
S 52=	CARPENTER R	ADULT CARE HOMES ANNUAL REPORTING	S -REF TO COM ON CH&HUMRS	02-06-97	
S 53=	DANNELLY	ADULT CARE/NURSING HOME PENALTIES	*R -CH. SL 97-0431	02-06-97	04-23-97
S 54=	COCHRANE	RESIDENCY REQ./SPECIAL ASSISTANCE	S -REF TO COM ON CH&HUMRS	02-06-97	
S 207=	FOXX	FOSTER CARE CRIMINAL CK CORRECTION	*R -CH. SL 97-0140	02-20-97	04-01-97
S 212=	WEBSTER	DAY CARE PLAYGROUND EQUIPMENT	S -REF TO COM ON CH&HUMRS	02-20-97	
S 213=	WEBSTER	AMEND FAMILY CARE HOME REPORTING	S -REF TO COM ON CH&HUMRS	02-20-97	
S 304=	ODOM	DAY CARE FRAUD COLLECTIONS	H -REF TO COM ON HR	03-05-97	04-23-97
S 305	ODOM	SOLICITOR'S SECURITY OPTION	R -CH. SL 97-0124	03-05-97	04-09-97
S 307=	MARTIN W	DHR REORGANIZATION	*H -REF TO COM ON RULES	03-05-97	04-30-97

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

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: CHILDREN & HUMAN RESOURCES — Valid Through 21-NOV-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 308=	MARTIN W	DEPENDENT JUVENILE DEFINITION	S -REF TO COM ON CH&HUMRS	03-05-97	
S 332	LUCAS	FOSTER CARE TRAINING	H -REF TO COM ON HR	03-10-97	04-02-97
S 346	DANNELLY	JUVENILE GUARDIANS	*H -REF TO COM ON HR	03-10-97	04-09-97
S 351	MILLER B	SOCIAL SERVICES COMM'N AUTHORITY	*S -RE-REF COM ON RULES &	03-10-97	04-02-97
S 351	MILLER B	SOCIAL SERVICES COMM'N AUTHORITY	*S -RE-REF COM ON RULES &	04-03-97	04-29-97
S 367=	DANNELLY	ELIMINATE MEDICAID RX LIMIT	S -RE-REF COM ON APPROPR	03-11-97	04-30-97
S 383=	PERDUE	HEALTH TO DHR/DEHNR NAME CHANGE	*H -REF TO COM ON HR	03-13-97	04-03-97
S 413	KINNAIRD	OB-GYN ACCESS/MEDICAID RECIPIENTS	S -REF TO COM ON CH&HUMRS	03-18-97	
S 422=	CONDER	REDUCE COUNTY SHARE/PAYMENTS	S -REF TO COM ON CH&HUMRS	03-19-97	
S 445	RAND	ALLOW NURSING INTERSTATE COMPACTS	R -CH. SL 97-0491	03-20-97	04-23-97
S 479=	LUCAS	REG. DEEDS-NO ABUSE INFO	H -REF TO COM ON HR	03-25-97	04-16-97
S 481=	LUCAS	GLAUCOMA PROGRAM REPEALED	S -RE-REF COM ON CH&HUMRS	03-25-97	04-16-97
S 481=	LUCAS	GLAUCOMA PROGRAM REPEALED	S -RE-REF COM ON CH&HUMRS	04-17-97	
S 483=	LUCAS	PHYSICIAN SERVICES FEE	*R -CH. SL 97-0508	03-25-97	04-16-97
S 484=	LUCAS	VITAL RECORDS ACCESS	*S -RE-REF COM ON FINANCE	03-25-97	04-29-97
S 485=	LUCAS	MEDICAL INVESTIGATORS	S -RE-REF COM ON COMMERCE	03-25-97	04-23-97
S 486=	LUCAS	CLARIFY FOOD ESTAB. DEFINITION	*H -RE-REF COM ON RULES	03-25-97	04-24-97
S 488	KINNAIRD	VOC. REHAB. COUNCIL CHAIR	R -CH. SL 97-0509	03-25-97	04-09-97
S 521	CARPENTER R	DOC PILOT/SEXUAL ASSAULT	*R -CH. SL 97-0288	03-26-97	04-29-97
S 536	PAGE	BAN PARTIAL-BIRTH ABORTIONS-2	S -REF TO COM ON CH&HUMRS	03-27-97	
S 583	FORRESTER	PHYSICIAN EDUCATION & REGISTRATION	*R -CH. SL 97-0481	04-01-97	04-16-97
S 595	LUCAS	PHYSICIAN ASSISTANT LICENSURE	R -CH. SL 97-0511	04-01-97	04-09-97
S 626	FORRESTER	OFFICE OF WOMEN'S HEALTH	*R -CH. SL 97-0172	04-01-97	04-23-97
S 636	HARTSELL	PUBLIC HEALTH AUTHORITY ACT	*R -CH. SL 97-0502	04-01-97	04-29-97
S 690=	LUCAS	NEEDLE EXCHANGE PILOT PROGRAM	*S -RE-REF COM ON CH&HUMRS	04-03-97	04-29-97
S 690=	LUCAS	NEEDLE EXCHANGE PILOT PROGRAM	*S -RE-REF COM ON CH&HUMRS	04-30-97	
S 735	ODOM	COUNTY CONTROL OF HUMAN SERVICES	S -REF TO COM ON CH&HUMRS	04-07-97	
S 754	REEVES	UNEMPL. BENEFITS SPOUSAL CHANGES	S -RE-REF COM ON APPROPR	04-07-97	04-29-97
S 757	MILLER B	ADVANCE INSTR./MENTAL HEALTH	*R -CH. SL 97-0442	04-08-97	04-30-97
S 774	RAND	DHR SECRETARY SALARY FLEXIBILITY	S -REF TO COM ON CH&HUMRS	04-09-97	

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NORTH CAROLINA G[illegible]AL ASSEMBLY
COMMITTEE SU[illegible] REPORT
1997-98 Regular Session — SENATE: CHILDREN & HUMAN RESOURCES — Valid Through 21-NOV-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 780=	GULLEY W	TELEMEDICINE BY LICENSED DOCTORS	*R -CH. SL 97-0514	04-10-97	04-23-97
S 806	**CONDER**	**CHILDHOOD LEAD EXPOSURE CONTROL**	***H -REF TO COM ON HR**	**04-10-97**	**04-17-97**
S 851	KINNAIRD	LIMIT PROVISIONAL LICENSE	*R -CH. SL 97-0522	04-15-97	04-30-97
S 876	FORRESTER	CRIMINAL CHECKS/CONTRACT AGENCIES	R -CH. SL 97-0125	04-15-97	04-30-97
S 889	MARTIN W	STUDY AMERICAN SIGN LANGUAGE	*S -RE-REF COM ON RULES &	04-16-97	04-30-97
S 924	ODOM	CRIMINAL RECORDS CHECKS/DHR	*R -CH. SL 97-0260	04-17-97	04-30-97
S 929	COOPER	ENHANCE CHILD CARE	*R -CH. SL 97-0506	04-17-97	04-28-97
S 946=	COCHRANE	IMPROVE CHILD PROTECTION/RECORDS	S -REF TO COM ON CH&HUMRS	04-17-97	
S 962	MARTIN W	VOL. ADMISSION/FAMILY UNIT	*H -CAL PURSUANT RULE 36(A)	04-17-97	04-30-97
S1015	**MARTIN W**	**WELFARE REFORM ACT OF 1997-2**	***H -RE-REF COM ON APPROP**	**04-21-97**	**04-30-97**
S1016=	MARTIN W	DIR. PAY/SUBS. ABUSE PROF.	H -ASSIGNED TO INS-HLTH	04-28-97	04-30-97
S1023	FOXX	FAMILY FOSTER HOME STANDARDS	*R -CH. SL 97-0110	04-21-97	04-30-97
S1047	LUCAS	AMEND PSYCHOLOGY PRACTICE ACT	S -REF TO COM ON CH&HUMRS	04-24-97	

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

AGENDA
March 5, 1997
Children and Human Resources

WELCOME

Chair Senator Jeanne H. Lucas

Vice-Chairs Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented:

SB52 Adult Care Homes Annual Reporting Req.
Sponsor Senator Carpenter

SB54 Residency Req. for Special Assistance
Sponsor Senator Cochrane

Sergeant-at-Arms Christy Traylor
Archie McMillian

Page Ruth Ann Badgett of Toast, North Carolina
Sponsor Senator Don East

Next Meeting Scheduled for March 12, 1997 11:00am Room 544

Senate Committee on Children & Human Resources
Minutes of Wednesday, March 5, 1997

The Senate Committee on Children & Human Resources met at 11 am on Wednesday March 5, 1997 in Room 544 of the State Legislative Office Building.

Sixteen (16) members of the Committee were present.

Senator Jeanne H. Lucas, Chair of the Committee, called the meeting to order, after which she gave a welcoming statement, opening remarks and introduced the members, pages and Sergeant-at-Arms.

Senate Bill 52 entitled Adult Care Homes Annual Reporting Req. was presented by its sponsor, Senator Carpenter. Sen. Dannelly introduced a committee substitute which was accepted. After some discussion of the bill, it was decided to hold the bill and discuss it at a later date.

Senate Bill 54 entitled Residency Req. for Special Assistance was presented by it sponsor Senator Cockrane. Adam Searing, NC Health Access Coalition and Deborah Ross ACLU spoke on the bill. After continued discussion, it was decided to hold the bill and discuss it at a later date.

The next scheduled meeting will be on Wednesday March 12, 1997 at 11:00am in Room 544LOB.

The business being completed, Senator Lucas adjourned the meeting.

Respectfully submitted,

B. D-Yerumo

Bernadette David-Yerumo, Committee Clerk

Jeanne H. Lucas

Senator Jeanne H. Lucas

Chair

North Carolina General Assembly
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March 3, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: John Young and Sue Floyd

RE: SB- 52- Adult Care Home Annual Reporting Requirement

Historically, the General Assembly has established the State/County Special Assistance program rate in the Appropriations Act without objective data about what it cost to deliver the service. This program pays for adult care home (rest home) care for about 20,000 persons with a $91 million cost shared equally by the State and counties. To improve the appropriation of State/County Special Assistance funds to pay for residents' care in adult care home, the 1995 General Assembly required licensed adult care homes which receive State/County Special Assistance funds to submit annual audited reports of actual costs to the Department of Human Resources with the first report due March 1, 1996.

After one year's experience, it is DHR's suggestion the the reporting date be changed to December 31 so that DHR will have sufficient time to collect the data and determine the payment rate for adult care homes to be included in the budget. The March 1 date does not allow the cost reporting process to mesh with the state budget process.

Currently, the only penalty for noncompliance with the reporting requirements is DHR's authority to suspend or revoke an adult care home license. The bill would give another enforcement measure by requiring DHR to suspend admissions to a facility that fails to submit an annual report by December 31st.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 52*

Short Title: Adult Care Homes Annual Reporting Req. (Public)

Sponsors: Senators Carpenter, Cochrane, Martin of Pitt, and Dannelly.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE DATE ANNUAL AUDITED REPORTS ARE TO BE SUBMITTED BY ADULT CARE HOMES TO THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-4.2(e) reads as rewritten:

"(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period shall be October 1 through September 30, with the annual report due by the following ~~March 1.~~ December 31."

Section 2. G.S. 131D-4.2(g) reads as rewritten:

"(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31. Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes."

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

North Carolina General Assembly
Legislative Services Agency

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March 3, 1997

MEMORANDUM

TO: Senator Robert Carpenter

FROM: John Young and Sue Floyd

RE: Proposed Committee Substitute for SB- 52- Adult Care Home Annual Reporting Requirement

Historically, the General Assembly has established the State/County Special Assistance program rate in the Appropriations Act without objective data about what it cost to deliver the service. This program pays for adult care home (rest home) care for about 20,000 persons with a $91 million cost shared equally by the State and counties. To improve the appropriation of State/County Special Assistance funds to pay for residents' care in adult care home, the 1995 General Assembly required licensed adult care homes which receive State/County Special Assistance funds to submit annual audited reports of actual costs to the Department of Human Resources with the first report due March 1, 1996.

After one year's experience, it is DHR's suggestion the the reporting date be changed to December 31 so that DHR will have sufficient time to collect the data and determine the payment rate for adult care homes to be included in the budget. It was found that the March 1 deadline does not allow the cost reporting process to mesh with the State budget process. DHR would be able to delay the December 31 deadline for up to 30 days if DHR finds good cause which is defined as "an action that is uncontrollable by the provider".

Currently, the only penalty for noncompliance with the reporting requirements is DHR's authority to suspend or revoke an adult care home license. The bill would give another enforcement measure by requiring DHR to suspend admissions to a facility that fails to submit an annual report by December 31st.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 52*
Proposed Committee Substitute S52-PCS1580

Short Title: Adult Care Homes Annual Reporting Req. (Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE DATE ANNUAL AUDITED REPORTS ARE TO BE SUBMITTED BY ADULT CARE HOMES TO THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-4.2(e) reads as rewritten:

"(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period shall be October 1 through September 30, with the annual report due by the following ~~March 1.~~ December 31, unless in the Department's view good cause exists for the delay. A good cause is an action that is uncontrollable by the provider. If the Department finds good cause for the delay, it may extend the deadline for filing the report for up to an additional 30 days."

Section 2. G.S. 131D-4.2(g) reads as rewritten:

"(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31, unless the Department has granted an extension for good cause pursuant to subsection (e) of this section. Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 54*

Short Title: Residency Req. for Special Assistance. (Public)

Sponsors: Senators Cochrane, Martin of Pitt, Carpenter, Dannelly; Forrester, Foxx, and Ledbetter.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NINETY-DAY WAITING PERIOD FOR NEW RESIDENTS OF NORTH CAROLINA WHO NEED RESIDENCE IN ADULT CARE HOMES AND WHO NEED STATE-COUNTY SPECIAL ASSISTANCE FUNDS TO PAY FOR THEIR CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-41(b) reads as rewritten:

"(b) Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and

(3) Is a resident of ~~North Carolina.~~ North Carolina for at least 90 days prior to receiving this assistance."

Section 2. This act is effective when it becomes law and applies to residents making application for assistance on or after that date.

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March 3 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: John Young and Sue Floyd, Committee Staff

RE: SB 54-Residency Requirements for Special Assistance

The Special Assistance for Adults program was established by the General Assembly fifty years ago to provide domiciliary care for North Carolina residents. The Special Assistance program is funded with State and county appropriations: 50% State and 50% county funds. During SFY 95-96, there were 20,000 SA recipients and total expenditures were $91.1 million.

The current State Statute and APA rules governing the Special Assistance program require the applicant/recipient to be a State resident. However they do not: (1) set a minimum period of time the applicant must have lived in North Carolina in order to be able to apply for SA; (2) set a period of time the applicant must intend to remain in the State in order to receive SA; or (3) require that the applicant live in a private living arrangement prior to receiving SA.

SB 81 is recommended by the Study Commission on Aging and establishes a 90-day waiting period for new residents of North Carolina who need residence in adult care homes and who need Special Assistance funds to pay for their care.

The Attorney General's Office advised the Commission that establishing a state residency requirement that includes a waiting period could be challenged in court. If a 90 day residency is challenged, the courts will look for any compelling reason the State has for imposing the requirement. While the court will look to see if the fundamental right to travel in inhibited, defensible arguments can be made that a short waiting period is reasonable in order for the State to protect itself from fraud by verifying that an applicant is a bona fide resident of the State.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

SENATE COMMITTEE ON CHILDREN AND HUMAN RESOURSES — 3/5/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk. Morning Session

NAME	FIRM OR STATE AGENCY AND ADDRESS
Don Willis	DMHDDSAS
Deborah Ross	ACLU
Roslyn Sawin	Lobbyist
Lois Creech	DMV/Veh Reg
Ann Cates	DMV/Dr. Lic.
Adam Searing	NC Health Access
Pauline Roesler	NCACC
Suzanne Williams	Bone Assoc/LTC
Craig Souza	NCACC
Mary H. Odom	NCCARE
Bob Blum	Dept of Justice
John Tamer	DHR/DFS
Lou Wilson	NCALTCF
Helen Lipinski	Meck Co
Lynn Tefft	OSBM
Myra Dill	NASW-NC
Whitney Craig	DMHDDSAS
Joyce Johnson	DHR
Lynda McDaniel	DHR/DFS
Allen Hardison	Greene County

AGENDA

March 12, 1997
Children and Human Resources

WELCOME

Chair: Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB53 Penalties for Adult Care/Nursing Homes.
Sponsor: Senator Dannelly

HB77 Area Mental Health Authority.
Sponsor: Representative Howard

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Samantha Blake, Clayton, N.C.
Sponsor: Senator Mark Basnight

Rachel Martin McCleansville, N.C.
Sponsor: Senator William Martin

Next Meeting Scheduled for Wednesday, March 19, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Wednesday, March 12, 1997

The Senate Committee on Children & Human Resources met at 11:00am on Wednesday March 12, 1997 in Room 544 of the State Legislative Office Building.

Fifteen (15) members of the Committee were present.

Senator Jeanne H. Lucas Chair of the Committee, called the meeting to order, after which she gave greetings and introduced the pages.

Senate Bill 53 was removed from the agenda and will be discussed at a later date.

House Bill 77 entitled Area Mental Health Authority. Representative Howard the bill sponsor presented the bill. There was some discussion regarding an amendment to the bill however, it was not voted on. The bill received a favorable report.

The next scheduled meeting will be held on Wednesday March 19, 1997 at 11:00am in Room 544LOB.

The business being completed, Senator Lucas adjourned the meeting.

Respectfully Submitted,

Bernadette David-Yerumo

Bernadette David-Yerumo, Committee Clerk

Jeanne H. Lucas

Senator Jeanne H. Lucas, Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Wednesday, March 12, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

H.B. 77 Area Mental Health Authority.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

North Carolina General Assembly
Legislative Services Agency

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March 12, 1997

MEMORANDUM

TO: Senate Committee on Children and Youth

FROM: John Young and Sue Floyd

RE: SB 53-Adult Care Home and Nursing Home Penalties

The 1987 General Assembly established an administrative penalties process for violations of nursing home and rest home facility laws. These statutes that allow the Department of Human Resources to levy penalties on nursing homes and adult care homes do the following:

1. Classifies violations into;
   a. Type A-violation that is a substantial risk that death or serious physical harm has or might occur with a range of fines from $250 to $5000,
   b. Type B-violation that has a direct relationship to the health, safety, or welfare of any patient, but which does not create substantial risk that death or serious physical harm will occur with a range of fines up to $500.
2. Provides additional penalties for failure to correct violations.
3. Sets factors to be considered in determining the amount of the penalty.
4. Sets procedures for contesting penalties under the Administrative Procedure act.
5. Allows civil action for recovery of unpaid penalties.
6. Provides review of penalties by the Penalty Review Committee established by G. S. 131D-34(h). The Committee is composed of nine members appointed by the Secretary of DHR.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

In addition to civil money penalties, DHR has several enforcement remedies available in State law:

1. Provisional license;
2. Suspension of admissions;
3. Temporary management;
4. Revocation of a license; and
5. Summary suspension of a license.

Senate Bill 53 would make the following changes to the current statutes that levy civil penalties on adult care homes and nursing homes:

1. Changes the range of civil penalties for Type A violations to "not less than $500 nor more than $10,000 (Currently, not less than $250 nor more than $5000). This change would apply to adult care homes licensed for more than nine beds and nursing homes.
2. Deletes the money penalty for Type B violations but requires DHR to require a plan of correction and DHR may require a plan of correction within a specific time period to address any Type B violation.
3. Requires local county departments of social services and DHR's Division of Facility Services personnel submit proposed penalty recommendations within 45 days of the citation of a violation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 77

Short Title: Area Mental Health Authority. (Public)

Sponsors: Representatives Howard, Brawley, Gardner, McCombs, Mitchell; and Watson.

Referred to: Human Resources.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES TO DISSOLVE CERTAIN AREA MENTAL HEALTH AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of the Department of Human Resources shall dissolve all area mental health, mental retardation, and substance abuse authorities that are comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census. Prior to dissolution, the Secretary shall make the necessary and appropriate provisions relating to personnel and other matters, and dealing with the distribution of the assets and liabilities of the area authority. The dissolution shall take effect not later than June 30, 1997. The Secretary shall permit counties that were part of an area authority dissolved pursuant to this act to provide mental health services as a single-county area authority or to align with another single-county or multicounty area authority.

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

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March 3, 1997

MEMORANDUM

TO: Senate Committee on Children Human Resources

FROM: John Young, Committee Staff

RE: HB 77-Area Mental Health Authority

Background

In North Carolina, the state and local governments share responsibility for the treatment of mental illness, developmental disabilities, and substance abuse. Although some persons receive services directly from state-operated facilities, most public mental health services are planned, coordinated, and delivered on the local level by area mental health, developmental disabilities, and substance abuse authorities, known as area authorities. Local services are provided under state supervision, pursuant to state policy, with the aid of state funds, and through the participation of private providers, but the area authority bears primary responsibility for the provision of public mental health services. This governing structure was created by the 1971 General Assembly and is found in Part 1 of Chapter 122C of the General Statutes.

Each area authority serves a designated geographic portion of the state called a catchment area. There are forty-one area authorities. Twenty-five serve multicounty catchment areas ranging from two to seven counties in size, and sixteen area authorities each serve a single county.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

House Bill 77

When the governing structure was established in 1971, there was created a process by which the counties could establish an area authority (G.S. 122C-115(c). The General Assembly did not create a clear mechanism if a county chose to dissolve itself from an existing area authority. HB 77 provides for the dissolution of one of the forty-one area mental health authorities. Since the Constitution of North Carolina prohibits a local health bill, HB 77 applies to any area mental health authority which is comprised of three counties at least two of which each have a population of 90,000 or more according to the most recent decennial federal census.

HB 77 requires the Secretary of the Department of Human Resources to dissolve by June 30, 1997 any area authority which meet the stated state-wide guidelines of an authority of three counties with at least two of the counties having a population of 90,000 or more. It also requires the Secretary to make "necessary and appropriate" provisions about personnel and distribution of the assets of the dissolved authority. The counties that were part of the dissolved authority may then provide services as a single county area authority or align with another single-county or multicounty area authority.

Senate Committee on Children & Human Resources
Minutes of Wednesday, March 19, 1997

The Senate Committee on Children & Human Resources was cancelled for March 19, 1997 and rescheduled for March 26, 1997, in Room 544 of the State Legislative Office Building.

Respectfully submitted,

Bernadette David-Yerumo

Bernadette David-Yerumo

Jeanne H. Lucas

Senator Jeanne H. Lucas
Chairman

AGENDA

March 26, 1997
Children and Human Resources

WELCOME

Chair: Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB53 Penalties for Adult Care/Nursing Homes.
Sponsor: Senator Dannelly

SB383 Health to DHR/DEHNR Name Change/AB.
Sponsor: Senator Perdue

SB207 Foster Care Criminal Check Correction.
Sponsor: Senator Foxx

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Charish Martin, Yadkinville, NC
Sponsor: Senator John Garwood

Curtis Thomas, Greensboro, NC
Sponsor: Senator William Martin

Next Meeting Scheduled for Wednesday, April 2, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Wednesday, March 26, 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Wednesday, March 26, 1997 in Room 544 of the State Legislative Office Building.

Thirteen (13) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting to order.

Senate Bill 207 entitled Foster Care Criminal Check Correction was presented by its sponsor, Senator Fox. Senator Fox also introduced an amendment which was accepted. After some discussion of the bill, it was decided to be reported out as unvavorable as to bill, but favorable as to the committee substitute bill.

Senate Bill 383 entitled Health to DHR/DEHNR Name Change/AB. was presented by its sponsor Senator Perdue. Senator Martin moved that the proposed committee substitute bill be approved, which was accepted. Senator Perdue explained the bill. After some discussion of the bill it was decided that this bill will be discussed at a later date.

Senate Bill 53 was placed on the calender, however it was decided that it would be discussed at a later date.

The business being completed, the meeting was adjourned. The next scheduled meeting will be on Wednesday April 2, 1997 at 11:00am in room 544 LOB.

Respectfully submitted,

_____

Bernadette David-Yerumo
Committee Clerk

_____

Senator Jeanne H. Lucas
Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Tuesday, April 01, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

S.B. **207** Foster Care Criminal Check Correction.

Draft Number:	PCS4540
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 207

Short Title: Foster Care Criminal Check Correction. (Public)

Sponsors: Senators Foxx, Ballance, Kerr, McDaniel, Warren and Webster.

Referred to: Children and Human Resources.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE STATUTES PROVIDING FOR CRIMINAL HISTORY RECORD CHECKS OF INDIVIDUALS INVOLVED IN PROVIDING CHILD FOSTER CARE AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-10.2 reads as rewritten:

"**§ 131D-10.2. Definitions.**

For purposes of this Article, unless the context clearly implies otherwise:

(1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.

(2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.

(3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.

(4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.

(5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.

(6) 'Commission' means the Social Services Commission.

(6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(7) 'Department' means the Department of Human Resources.

(8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.

(9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

(9a) 'Foster Parent' means any individual who is 18 years of age or older who ~~permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.~~ is licensed by the State to provide foster care.

(10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other

organization or enterprise doing business in this State, whether or not for profit.

(11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.

(12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.

(13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care."

Section 2. G.S. 131D-10.3A reads as rewritten:

"**§ 131D-10.3A. Mandatory criminal ~~checks of foster parents.~~ checks.**

(a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster ~~parents~~ parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked ~~and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made.~~ and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this act, all ~~foster parents~~ individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all ~~foster parents~~ individuals who ~~have been~~ are required to be checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit ~~a foster parent~~ an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that ~~the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ the safety and well-being of a child placed in the home for foster care would be at risk based on the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the ~~foster parent~~ individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the

Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the ~~foster parent~~ individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

~~FOSTER PARENT~~
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO ~~PROVIDE FOSTER CARE~~ RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have ~~responsibility for the safety and well-being of children,~~ a foster child reside with you, you shall have the opportunity to ~~complete,~~ complete or challenge the accuracy ~~of,~~ of the information contained in the SBI or FBI identification records.

If ~~you are denied~~ licensure is denied or ~~your~~ the foster home license is revoked by the Department of Human Resources as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may

request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to ~~prohibit the foster parent from providing~~ deny or revoke a license to provide foster care. Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the ~~foster parent's~~ criminal ~~history.~~ history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of ~~the foster parent's~~ an individual's criminal history to the foster ~~parent.~~ parent or any other individual required to be checked. The Department shall also notify the ~~foster parent~~ individual of the ~~foster parent's~~ individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on ~~foster parents~~ individuals required by this section and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of

Social Services, Department of Human Resources, shall bear the costs of implementing this section."

Section 3. G.S. 114-19.4 reads as rewritten:

"**§ 114-19.4. Criminal record checks ~~of foster parents.~~ for foster care.**

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

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

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March 19, 1997

EMORANDUM

O: Senate Children and Human Resources Committee

ROM: Linda Attarian, Committee Counsel

E: SB 207 – First Edition – Senators Foxx , Ballance, Kerr, McDaniel, Warren and Webster

Explanation of Senate Bill 207: An Act to Make Clarifying Amendments to the Statutes Providing for Criminal History Record Checks Of Individuals Involved in Providing Child Foster Care as Recommended by the Joint Legislative Administrative Procedure Oversight Committee

Senate Bill 207 will correct any ambiguity in recent amendments to the child foster care licensing statute requiring a criminal history record check be conducted on all persons providing child foster care and any adult member of the foster family household. The ambiguity in the law that was identified by the Rules Review Commission. The bill corrects the ambiguity by clarifying that the definition of "foster parent" only applies to a person licensed or seeking to be licensed as a foster parent. The bill also ensures that the legislative intent of the 1995 amendments are maintained by requiring that as a condition of licensure or relicensure as a family foster home, all persons, age 18 or older, residing in the family foster home, have their national and state criminal history record checked to determine if they are unfit for a foster child to reside with them.

Section By Section Summary:

Section 1. Amends G.S. 131D-10.2(9a), the definition of "Foster Parent", to limit the term to just those people who are licensed to provide foster care.

Section 2. Amends G.S. 131D-10.3A to specifically spell out that criminal history record checks are to be performed on persons currently licensed as foster parents, person seeking to be licensed as foster parents, and any other person 18 years of age or over who lives in a foster home, or a home that might be licensed. The amendment also clarifies that licensure shall be

denied or revoked if DSS determines, based on the criminal history record check, that any of the adults are unfit for a foster child to reside with them. Conforming changes are also made in the notification form given to the person whose criminal record is to be checked.

Section 3. Makes conforming changes to the statute which authorizes the SBI to furnish these criminal history record checks.

Section 4. Makes the act effective when it becomes law.

Background Information:

In 1995, the General Assembly amended the child foster care licensing statute to provide that the national and state criminal history record be checked not only on persons licensed or seeking to be licensed as foster parents, but also any other person age 18 or older permanently residing in the household. Other parts of this same article clearly referred to foster parents as those persons licensed as foster parents, and not all adults permanently residing in the home. Funds were appropriated to cover the cost for record checks of foster parents as well as the other adults. The change in the law was effective January 1, 1996. The Social Services Commission adopted temporary rules to implement this new law and proceeded with the adoption of permanent rules.

The permanent rules were submitted to the Rules Review Commission for approval at its July, 1996 meeting. Based on a staff recommendation that the foster care statutes, when read as a whole, were not clear that the Social Services Commission had the authority to require criminal history record checks on individuals living in the foster home who were not seeking to be licensed, the Rules Review Commission objected to the rules. The Rules Review Commission felt there was ambiguity in the statutes related to the term "foster parent".

Based on the objections raised by the Rules Review Commission, the Social Services Commission revised its rules to satisfy the Rules Review Commission's objections by deleting references to other persons age 18 or older permanently residing in the home. At its September, 1996 meeting, the Rules Review Commission approved the revised rules. Based on the revisions to the revised rules, the Social Services Commission ceased obtaining the <u>full</u> criminal history record on non-licensed persons age 18 or older permanently residing in the family foster home.

The Administrative Procedure Oversight Committee felt as a result of this change in the proposed rule, the Social Services Commission was not carrying out the legislative intent to check the criminal history record of all persons age 18 or older permanently residing in a family foster home. The Committee thought the statute should be clarified to remove any ambiguity arising from the definition and use of the term "foster parent".

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 207
Proposed Committee Substitute S207-PCS4540

Short Title: Foster Care Criminal Check Amendments. (Public)

Sponsors:

Referred to:

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CRIMINAL HISTORY RECORD CHECKS LAW TO MAKE CLARIFYING CHANGES AND TO REQUIRE A CRIMINAL BACKGROUND CHECK ON HOME HEALTH AGENCY APPLICANTS ONLY FOR CERTAIN POSITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-10.2 reads as rewritten:

"**§ 131D-10.2. Definitions.**

For purposes of this Article, unless the context clearly implies otherwise:

(1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.

(2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.

(3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.

(4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.

(5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.

(6) 'Commission' means the Social Services Commission.

(6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(7) 'Department' means the Department of Human Resources.

(8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.

(9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

(9a) 'Foster Parent' means any individual who is 18 years of age or older who ~~permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.~~ is licensed by the State to provide foster care.

(10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other

organization or enterprise doing business in this State, whether or not for profit.

(11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.

(12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.

(13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care."

Section 2. G.S. 131D-10.3A reads as rewritten:

"**§ 131D-10.3A. Mandatory criminal ~~checks of foster parents.~~ checks.**

(a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster ~~parents~~ parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked ~~and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made.~~ and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this act, all ~~foster parents~~ individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all ~~foster parents~~ individuals who ~~have been~~ are required to be checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit ~~a foster parent~~ an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that ~~the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ the safety and well-being of a child placed in the home for foster care would be at risk based on the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the ~~foster parent~~ individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the

Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the ~~foster parent~~ individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

~~FOSTER PARENT~~
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO ~~PROVIDE FOSTER CARE~~ RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have ~~responsibility for the safety and well-being of children,~~ a foster child reside with you, you shall have the opportunity to ~~complete,~~ complete or challenge the accuracy ~~of,~~ of the information contained in the SBI or FBI identification records.

If ~~you are denied~~ licensure is denied or ~~your~~ the foster home license is revoked by the Department of Human Resources as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may

request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to ~~prohibit the foster parent from providing~~ deny or revoke a license to provide foster care. Any ~~foster parent~~ person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the ~~foster parent's~~ criminal ~~history.~~ history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of ~~the foster parent's~~ an individual's criminal history to the foster ~~parent.~~ parent or any other individual required to be checked. The Department shall also notify the ~~foster parent~~ individual of the ~~foster parent's~~ individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on ~~foster parents~~ individuals required by this section and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of

Social Services, Department of Human Resources, shall bear the costs of implementing this section."

Section 3. G.S. 114-19.4 reads as rewritten:

"**§ 114-19.4. Criminal record checks ~~of foster parents.~~ for foster care.**

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the ~~foster parent~~ individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the ~~foster parent~~ individual to be checked. The fingerprints of the ~~foster parent~~ individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 4. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by a nursing home ~~or a home care agency~~ licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 207

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

S207-ARM-002

Date 3/19 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator Foxx

moves to amend the bill on page 6, line 19 and 20, by adding between the lines a new section to read:

"Section 4. G.S. 131E-265(a) reads as rewritten:
'**§ 131E-265. Criminal history record checks required for certain applicants for employment.**

(a) Requirement. -- An offer of employment by a nursing home ~~or a home care agency~~ licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 207

AMENDMENT NO. PCS 4540
(to be filled in by
Principal Clerk)

S207-ARM-002 Page 2 of __

shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed.'";
and by renumbering the following section accordingly.

SIGNED Virginia Foxx
Amendment Sponsor

SIGNED Deanne Lucas
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 383*

Short Title: Health to DHR/DEHNR Name Change/AB. (Public)

Sponsors: Senators Perdue, Forrester, and Martin of Guilford (Cosponsors).

Referred to: Children & Human Resources.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER HEALTH SERVICES TO THE DEPARTMENT OF HUMAN RESOURCES, TO CHANGE THE NAME OF THE DEPARTMENT OF HUMAN RESOURCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO CHANGE THE NAME OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART 1. TRANSFER AND RESTRUCTURE OF DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

Section 1. The name of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 3.

Department of ~~Human Resources.~~ Health and Human Services."

Section 2. G.S. 130A-55.1, 143B-136, 143B-137, 143B-138, and 143B-279.6 are repealed.

Section 3. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"**§ 143B-136.1. Department of Health and Human Services -- creation.**

There is created a department to be known as the 'Department of Health and Human Services,' with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law.

"**§ 143B-137.1. Department of Health and Human Services -- duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

"**§ 143B-138.1. Department of Health and Human Services -- functions and organization.**

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Division of Youth Services.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.
(3) Commission for the Blind.
(4) Professional Advisory Committee.
(5) Consumer and Advocacy Advisory Committee for the Blind.
(6) Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
(7) Social Services Commission.
(8) Child Day-Care Commission.
(9) Medical Care Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 383
Proposed Committee Substitute S383-CSRM-01
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Health to DHR/DEHNR Name Change/AB. (Public)

Sponsors:

Referred to: Senate Children and Human Resources

March 14, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER HEALTH SERVICES TO THE DEPARTMENT OF HUMAN RESOURCES, TO CHANGE THE NAME OF THE DEPARTMENT OF HUMAN RESOURCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO CHANGE THE NAME OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART 1. TRANSFER AND RESTRUCTURE OF DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

Section 1. The name of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 3.

Department of ~~Human Resources.~~ Health and Human Services."

Section 2. G.S. 130A-55.1, 143B-136, 143B-137, 143B-138, and 143B-279.6 are repealed.

Section 3. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"**§ 143B-136.1. Department of Health and Human Services -- creation.**

There is created a department to be known as the 'Department of Health and Human Services,' with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law.

"**§ 143B-137.1. Department of Health and Human Services -- duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

"**§ 143B-138.1. Department of Health and Human Services -- functions and organization.**

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Division of Youth Services.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 383*

Short Title: Health to DHR/DEHNR Name Change/AB. (Public)

Sponsors: Senators Perdue, Forrester, and Martin of Guilford (Cosponsors).

Referred to: Children & Human Resources.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER HEALTH SERVICES TO THE DEPARTMENT OF HUMAN RESOURCES, TO CHANGE THE NAME OF THE DEPARTMENT OF HUMAN RESOURCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO CHANGE THE NAME OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART 1. TRANSFER AND RESTRUCTURE OF DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

Section 1. The name of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 3.

Department of ~~Human Resources.~~ Health and Human Services."

Section 2. G.S. 130A-55.1, 143B-136, 143B-137, 143B-138, and 143B-279.6 are repealed.

Section 3. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"**§ 143B-136.1. Department of Health and Human Services -- creation.**

There is created a department to be known as the 'Department of Health and Human Services,' with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law.

"**§ 143B-137.1. Department of Health and Human Services -- duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

"**§ 143B-138.1. Department of Health and Human Services -- functions and organization.**

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Division of Youth Services.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.
(3) Commission for the Blind.
(4) Professional Advisory Committee.
(5) Consumer and Advocacy Advisory Committee for the Blind.
(6) Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.
(7) Social Services Commission.
(8) Child Day-Care Commission.
(9) Medical Care Commission.

(10) Emergency Medical Services Advisory Council.
(11) Board of Directors of the Governor Morehead School.
(12) Board of Directors for the North Carolina Schools for the Deaf.
(13) North Carolina Council for the Hearing Impaired.
(14) North Carolina Council on the Holocaust.
(15) Council on Developmental Disabilities.

(c) The functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Dental Health.
(2) State Center for Health Statistics.
(3) Division of Epidemiology.
(4) Division of Health Promotion.
(5) Division of Maternal and Child Health.
(6) Office of Minority Health.
(7) Office of Public Health Nursing.
(8) Division of Environmental Health.
(9) Division of Laboratory Services.
(10) Office of Local Health Services.
(11) Division of Post Mortem Medicolegal Examinations.

(d) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Environment, Health, and Natural Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Commission for Health Services.
(2) Council on Sickle Cell Syndrome.
(3) Governor's Council on Physical Fitness and Health.
(4) Commission of Anatomy.
(5) Minority Health Advisory Council.
(6) Advisory Committee on Cancer Coordination and Control.
(7) Water Treatment Facility Operators Board of Certification.

(e) The Department of Health and Human Services is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State."

Section 4. The name of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 7.
Department of ~~Environment,~~
~~Health,~~ Environment and Natural
Resources."

Section 5. G.S. 143B-279.2 reads as rewritten:

"**§ 143B-279.2. Department of ~~Environment, Health,~~ Environment and Natural Resources -- duties.**

It shall be the duty of the Department:

(1) To provide for the protection of the environment;

(1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.).

(1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and wastewater systems.

~~(2) To provide for the protection and enhancement of the public health;~~

(2a) To provide and keep a museum or collection of the natural history of the State and to maintain the North Carolina Biological Survey; and

(3) To provide for the management of the State's natural resources."

Section 6. G.S. 143B-279.3 reads as rewritten:

"**§ 143B-279.3. Department of Environment, Health, and Natural Resources -- structure.**

(a) All functions, powers, duties, and obligations ~~heretofore~~ previously vested in the following subunits of the following departments are ~~hereby~~ transferred to and vested in the Department of ~~Environment, Health,~~ Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

(1) Radiation Protection Section, Division of Facility Services, Department of Human Resources.

~~(2) Division of Health Services, Department of Human Resources.~~

~~(3) State Center for Health Statistics, Department of Human Resources.~~

(4) Coastal Management Division, Department of Natural Resources and Community Development.

(5) Environmental Management Division, Department of Natural Resources and Community Development.

(6) Forest Resources Division, Department of Natural Resources and Community Development.

(7) Land Resources Division, Department of Natural Resources and Community Development.

(8) Marine Fisheries Division, Department of Natural Resources and Community Development.

(9) Parks and Recreation Division, Department of Natural Resources and Community Development.

(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.
(11) Water Resources Division, Department of Natural Resources and Community Development.
(12) North Carolina Zoological Park, Department of Natural Resources and Community Development.
(13) Albemarle-Pamlico Study.
(14) Office of Marine Affairs, Department of Administration.

(b) All functions, powers, duties, and obligations ~~heretofore~~ previously vested in the following commissions, boards, councils, and committees of the following departments are ~~hereby~~ transferred to and vested in the Department of ~~Environment, Health,~~ Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

(1) Repealed by Session Laws 1993, c. 501, s. 27.
(2) Radiation Protection Commission, Department of Human Resources.
~~(3) Commission for Health Services, Department of Human Resources.~~
~~(4) Water Treatment Facility Operators Board of Certification, Department of Human Resources.~~
~~(5) Council on Sickle Cell Syndrome, Department of Human Resources.~~
~~(6) Perinatal Health Care Programs Advisory Council, Department of Human Resources.~~
~~(7) Governor's Council on Physical Fitness and Health, Department of Human Resources.~~
~~(8) Commission of Anatomy, Department of Human R. ources.~~
(9) Coastal Resources Commission, Department of Natural Resources and Community Development.
(10) Environmental Management Commission, Department of Natural Resources and Community Development.
(11) Air Quality Council, Department of Natural Resources and Community Development.
(12) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.
(13) Forestry Council, Department of Natural Resources and Community Development.
(14) North Carolina Mining Commission, Department of Natural Resources and Community Development.
(15) Advisory Committee on Land Records, Department of Natural Resources and Community Development.
(16) Marine Fisheries Commission, Department of Natural Resources and Community Development.
(17) Parks and Recreation Council, Department of Natural Resources and Community Development.

(18) Board of Trustees of the Recreation and Natural Heritage Trust Fund, Department of Natural Resources and Community Development.
(19) North Carolina Trails Committee, Department of Natural Resources and Community Development.
(20) Sedimentation Control Commission, Department of Natural Resources and Community Development.
(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.
(22) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.
(23) North Carolina Aquariums Commission, Department of Administration.

(c) (1) There is hereby created a division within the environmental area of the Department of ~~Environment, Health,~~ Environment and Natural Resources to be named the Division of Radiation Protection. All functions, powers, duties, and obligations of the Radiation Protection Section of the Division of Facility Services of the Department of Human Resources are transferred in their entirety to the Radiation Protection Division of the Department of ~~Environment, Health,~~ Environment and Natural Resources.

(2) There is hereby created a division within the environmental area of the Department of ~~Environment, Health,~~ Environment and Natural Resources to be named the Division of Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Human Resources are transferred in their entirety to the Division of Waste Management of the Department of ~~Environment, Health,~~ Environment and Natural Resources.

(d) The Department of ~~Environment, Health,~~ Environment and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State."

PART 2. TECHNICAL AND CONFORMING STATUTORY CHANGES.

Section 7. G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2

State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
~~Board of Environment, Health,~~ Environment and Natural ~~Resources~~ Resources, Department of	1
Revenue, Department of	1
~~Board of~~ Health and Human ~~Resources~~ Services, Department of	1
Commission for the Blind	1
~~Board of Transportation~~ Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
~~Department of~~ Cultural ~~Resources~~ Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1

Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of reports."

Section 8. G.S. 20-4.01(3b) reads as rewritten:

"(3b) Chemical Analyst. -- A person granted a permit by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services under G.S. 20-139.1 to perform chemical analyses."

Section 9. G.S. 20-16.5(j) reads as rewritten:

"(j) Costs. -- Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of fifty dollars ($50.00) as costs for the action before the person's license may be returned under subsection (h). The costs collected under this section shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the

Department of ~~Environment, Health, and Natural Resources.~~ Health and Human Services."

Section 10. G.S. 20-139.1 reads as rewritten:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. -- A chemical analysis, to be valid, ~~must~~ shall be performed in accordance with the provisions of this section. The chemical analysis ~~must~~ shall be performed according to methods approved by the Commission for Health Services by an individual possessing a current permit issued by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services for that type of chemical analysis. The Commission for Health Services ~~is authorized to~~ may adopt ~~regulations~~ rules approving satisfactory methods or techniques for performing chemical analyses, and the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services ~~is authorized to~~ may ascertain the qualifications and competence of individuals to conduct particular chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. -- Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:

(1) The officer possesses a current permit issued by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services for the type of chemical analysis.

(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.

(b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not Performed. -- Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of ~~his~~ the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to ~~analyse~~ analyze ~~his~~ the defendant's breath, preventive maintenance procedures required by the regulations of the

Commission for Health Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath ~~must~~ shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's willful refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

A person's willful refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Introducing Routine Records Kept as Part of Breath-Testing Program. -- In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.

(c) Withdrawal of Blood for Chemical Analysis. -- When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer ~~must~~ shall furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other

institution, person, firm, or corporation employing ~~him,~~ that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

(d) Right to Additional Test. -- A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law-enforcement officer having in his charge any person who has submitted to a chemical analysis ~~must~~ shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and ~~must~~ shall allow access to the person for that purpose. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(e) Recording Results of Chemical Analysis of Breath. -- The chemical analyst who administers a test of a person's breath ~~must~~ shall record the following information after making any chemical analysis:

(1) The alcohol concentration or concentrations revealed by the chemical analysis.

(2) The time of the collection of the breath sample or samples used in the chemical analysis.

A copy of the record of this information ~~must~~ shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.

(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood or breath sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services that ~~he~~ the analyst held on the date ~~he~~ the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing

instrument used, as shown on the maintenance records for that instrument.

The Department of ~~Environment, Health, and Natural Resources must~~ Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, ~~he~~ the person may subpoena the chemical analyst and examine him as if he were an adverse witness.

(f) Evidence of Refusal Admissible. -- If any person charged with an implied-consent offense refuses to submit to a chemical analysis, evidence of that refusal is admissible in any criminal action against him for an implied-consent offense under G.S. 20-16.2.

(g) Controlled-Drinking Programs. -- The Department of ~~Environment, Health, and Natural Resources is empowered to make regulations~~ Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations ~~must~~ shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

Section 11. G.S. 35A-1101 reads as rewritten:

"**§ 35A-1101. Definitions.**

When used in this Subchapter:

(1) 'Autism' means a physical disorder of the brain which causes disturbances in the developmental rate of physical, social, and language skills; abnormal responses to sensations; absence of or delay in speech or language; or abnormal ways of relating to people, objects, and events. Autism occurs sometimes by itself and sometimes in conjunction with other brain-functioning disorders.

(2) 'Cerebral palsy' means a muscle dysfunction, characterized by impairment of movement, often combined with speech impairment, and caused by abnormality of or damage to the brain.

(3) 'Clerk' means the clerk of superior court.

(4) 'Designated agency' means the State or local human ~~resources~~ services agency designated by the clerk in ~~his~~ the clerk's order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.

(5) 'Epilepsy' means a group of neurological conditions characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activity called seizures, which range from momentary lapses of consciousness to convulsive movements.

(6) 'Guardian ad litem' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

(7) 'Incompetent adult' means an adult or emancipated minor who lacks sufficient capacity to manage ~~his~~ the adult's own affairs or to make or communicate important decisions concerning ~~his~~ the adult's person, family, or property whether ~~such~~ the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

(8) 'Incompetent child' means a minor who is at least 17 1/2 years of age and who, other than by reason of ~~his~~ minority, lacks sufficient capacity to make or communicate important decisions concerning ~~his~~ the child's person, family, or property whether ~~such~~ the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.

(9) 'Indigent' means ~~that a person is~~ unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.

(10) 'Inebriety' means the ~~condition of any person who habitually, whether continuously or periodically, indulges in the~~ habitual use of ~~alcoholic beverages, narcotics,~~ alcohol or drugs ~~to such an extent as to stupefy his mind and render him~~ rendering a person incompetent to transact ordinary business ~~with safety to his~~ concerning the person's ~~estate; or who renders himself, by reason of the use of alcoholic beverages, narcotics, or drugs,~~ estate, dangerous to person or ~~property; or who, by the frequent use of alcoholic beverages, narcotics, or drugs, renders himself~~ property, cruel and intolerable to ~~his~~ family, or ~~fails from such cause~~ unable to provide ~~his family with reasonable necessities of life.~~ for family.

(11) 'Interim guardian' means a guardian, appointed prior to adjudication of incompetence and for a temporary period, for a ~~respondent~~ person who requires immediate intervention to address conditions that constitute imminent or foreseeable risk of harm to ~~his~~ the person's physical well-being or to ~~his~~ the person's estate.

(12) 'Mental illness' means an illness that so lessens the capacity of ~~the~~ a person to use self-control, judgment, and discretion in the conduct of ~~his~~ the person's affairs and social relations as to make it necessary or advisable for ~~him~~ the person to be under treatment, care, supervision, guidance, or control. The term 'mental illness' encompasses 'mental disease', 'mental disorder', 'lunacy', 'unsoundness of mind', and 'insanity'.

(13) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(14) 'Multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may ~~contain~~ include current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.

(15) 'Respondent' means a person who is alleged to be incompetent in a proceeding under this Subchapter.

(16) 'Treatment facility' has the same meaning as 'facility' in G.S. 122C-3(14), and includes group homes, halfway houses, and other community-based residential facilities.

(17) 'Ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction."

Section 12. G.S. 35A-1105 reads as rewritten:

"**§ 35A-1105. Petition before clerk.**

A verified petition for the adjudication of incompetence of an adult, or of a minor who is within six months of reaching majority, may be filed with the clerk by any person, including any State or local human ~~resources~~ services agency through its authorized representative."

Section 13. G.S. 35A-1202 reads as rewritten:

"**§ 35A-1202. Definitions.**

When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:

(1) ~~The term 'accounting' refers to~~ 'Accounting' means the financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom such reports are required to be filed.

(2) ~~The term 'clerk'~~ 'Clerk' means the clerk of superior court.

(3) ~~The term 'designated agency'~~ 'Designated agency' means the State or local human ~~resources~~ services agency designated by the clerk in ~~his~~ an order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.

(4) ~~The term 'disinterested public agent'~~ 'Disinterested public agent' means:

a. The director or assistant directors of a local human ~~resources~~ services agency, or

b. An adult officer, agent, or employee of a State human ~~resources~~ services agency.

The fact that a disinterested public agent is employed by a State or local human ~~resources~~ services agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.

(5) ~~The term 'estate'~~ 'Estate' means any interest in real property, choses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property.

(6) ~~The term 'financial report'~~ 'Financial report' means the report filed by the guardian concerning all financial transactions, including receipts and expenditures of the ward's money, sale of the ward's property, or other transactions involving the ward's property.

(7) ~~The term 'general guardian'~~ 'General guardian' means a guardian of both the estate and the person.

(8) ~~The term 'guardian ad litem'~~ 'Guardian ad litem' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

(9) ~~The term 'guardian of the estate'~~ 'Guardian of the estate' means a guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.

(10) ~~The term 'guardian of the person'~~ 'Guardian of the person' means a guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.

(11) ~~The term 'incompetent person'~~ 'Incompetent person' means a person who has been adjudicated to be an 'incompetent adult' or 'incompetent child' as defined in G.S. 35A-1101(7) or (8).

(12) ~~The term 'minor'~~ 'Minor' means a person who is under the age of 18, is not married, and has not been legally emancipated.

(13) ~~The term 'multidisciplinary~~ 'Multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.

(14) ~~The term 'status~~ 'Status report' means the report required by G.S. 35A-1242 to be filed by the general guardian or guardian of the person. A status report shall include a report of a recent medical and dental examination of the ward by one or more physicians or dentists, a report on the guardian's performance of ~~his~~ the duties ~~as~~ set forth in this Chapter and in the clerk's order appointing the guardian, and a report on the ward's condition, needs, and development. The clerk may direct that the report contain other or different information. The report may also contain, without limitation, reports of mental health or mental retardation professionals, psychologists, social workers, persons in loco parentis, a member of a multidisciplinary evaluation team, a designated agency, a disinterested public agent or agency, a guardian ad litem, a guardian of the estate, an interim guardian, a successor guardian, an officer, official, employee or agent of the Department of ~~Human Resources,~~ Health and Human Services, or any other interested persons including, if applicable to the ward's situation, group home parents or supervisors, employers, members of the staff of a treatment facility, or foster parents.

(15) ~~The term 'ward'~~ 'Ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction."

Section 15. G.S. 35A-1216 reads as rewritten:

"**§ 35A-1216. Rule-making power of Secretary of ~~Human Resources.~~ Health and Human Services.**

The Secretary of the Department of ~~Human Resources~~ Health and Human Services shall ~~issue~~ adopt rules ~~and regulations for the implementation of~~ concerning the guardianship responsibilities of disinterested public agents. The rules ~~and~~

~~regulations~~ shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians."

Section 16. G.S. 35A-1221 reads as rewritten:

"**§ 35A-1221. Application before clerk.**

Any person or corporation, including any State or local human ~~resources~~ services agency through its authorized representative, may make application for the appointment of a guardian of the estate for any minor or for the appointment of a guardian of the person or general guardian for any minor who has no natural guardian by filing an application with the clerk.

The application shall set forth, to the extent known:

(1) The minor's name, date of birth, address, and county of residence;

(2) The names and addresses of the minor's parents, if living, and of other persons known to have an interest in the application for appointment of a guardian; the name and date of death of the minor's deceased parent or parents;

(3) The applicant's name, address, county of residence, relationship if any to the minor, and interest in the proceeding;

(4) If a guardian has been appointed for the minor or custody of the minor has been awarded, a statement of the facts relating thereto and a copy of any guardianship or custody order, if available;

(5) A general statement of the minor's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled;

(6) A statement of the reason or reasons that the appointment of a guardian is sought; whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian; and whom the applicant recommends or seeks to have appointed as such guardian or guardians; and

(7) Any other information that will assist the clerk in determining the need for a guardian or in appointing a guardian."

Section 17. G.S. 35A-1239 reads as rewritten:

"**§ 35A-1239. ~~Human Resources~~ Health and Human Services bond.**

The Secretary of the Department of ~~Human Resources~~ Health and Human Services shall ~~require,~~ require or ~~purchase,~~ purchase ~~in such amounts as he deems adequate and proper,~~ individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all ~~such~~ agents, ~~such~~ the bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State."

Section 18. G.S. 50-30 reads as rewritten:

"**§ 50-30. Findings; policy; and purpose.**

(a) Findings. -- The General Assembly makes the following findings:

(1) There is a strong public interest in providing fair, efficient, and swift judicial processes for establishing and enforcing child support obligations. Children are entitled to support from their parents, and court assistance is often required for the establishment and enforcement of parental support obligations. Children who do not receive support from their parents often become financially dependent on the State.

(2) The State shall have laws that meet the federal requirements on expedited processes for obtaining and enforcing child support orders for purposes of federal reimbursement under Title IV-D of the Social Security Act, 42 U.S.C. § 66(a)(2). The Secretary of the United States Department of Health and Human Services may waive the expedited process requirement with respect to one or more district court district as defined in G.S. 7A-133 on the basis of the effectiveness and timeliness of support order issuance and enforcement within the district.

(3) The State has a strong financial interest in complying with the expedited process requirement, and other requirements, of Title IV-D of the Social Security Act, but the State would incur substantial expense in creating statewide an expedited child support process as defined by federal law.

(4) The State's judicial system is largely capable of processing child support cases in a timely and efficient manner and has a strong commitment to an expeditious system.

(5) The substantial expense the State would incur in creating a new system for obtaining and enforcing child support orders would be reduced and better spent by improving the present system.

(b) Purpose and Policy. -- It is the policy of this State to ensure, to the maximum extent possible, that child support obligations are established and enforced fairly, efficiently, and swiftly through the judicial system by means that make the best use of the State's resources. It is the purpose of this Article to facilitate this policy. The Administrative Office of the Courts and judicial officials in each district court district as defined in G.S. 7A-133 shall make a diligent effort to ensure that child support cases, from the time of filing to the time of disposition, are handled fairly, efficiently, and swiftly. The Administrative Office of the Courts and the State Department of ~~Human Resources~~ Health and Human Services shall work together to improve procedures for the handling of child support cases in which the State or county has an interest, including all cases that qualify in any respect for federal reimbursement under Title IV-D of the Social Security Act."

Section 19. G.S. 50-33(a) reads as rewritten:

"(a) ~~DHR~~ State to Seek Waiver. -- The State Department of ~~Human Resources,~~ Health and Human Services, with the assistance of the Administrative Office of the Courts, shall vigorously pursue application to the ~~Secretary of the~~ United States

Department of Health and Human Services for waivers of the federal expedited process requirement."

Section 20. G.S. 58-87-5(a) reads as rewritten:

"(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide grants to volunteer rescue units providing rescue or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible rescue or rescue/EMS unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The ~~Office of Emergency Medical Services in the~~ Department of ~~Human Resources~~ Health and Human Services shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. On December 15 of each year, the Department shall make grants to eligible rescue or rescue/EMS units subject to all of the following limitations:

(1) A grant to an applicant who is required to match the grant with non-State funds may not exceed fifteen thousand dollars ($15,000), and a grant to an applicant who is not required to match the grant with non-State funds may not exceed three thousand dollars ($3,000).

(2) An applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than one thousand dollars ($1,000) shall match the grant on a dollar-for-dollar basis with non-State funds.

(3) The grant may be used only for equipment purchases or capital expenditures.

(4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission."

Section 20.1. G.S. 58-39-75(20) reads as rewritten:

"(20) To the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services and the information disclosed is immunization information described in G.S. 130A-153."

Section 21. G.S. 66-58 reads as rewritten:

"**§ 66-58. Sale of merchandise 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~~ the unit, department or agency, or any individual employee or employees of ~~any such~~ the 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 contract with any person, firm or corporation for the operation or rendering of ~~any such~~ the businesses or services on behalf of ~~any such~~ the 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,~~ Health and Human Services ~~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~~ the 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.~~ Health and Human Services.

(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,~~ Environment and Natural Resources, except that ~~said~~ the 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~~ the 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~~ the 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~~ the 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~~ The 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~~ the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by ~~such~~ the 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~~ the 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~~ Health and Human Services 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~~ Health and Human Services 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~~ the 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.

(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~~ the 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 22. G.S. 90-85.34A(a) reads as rewritten:

"(a) A registered nurse in a local health department clinic may dispense prescription drugs and devices, other than controlled substances as defined in G.S. 90-87, under the following conditions:

(1) The registered nurse has training acceptable to the Board in the labeling and packaging of prescription drugs and devices;

(2) Dispensing by the registered nurse shall occur only at a local health department clinic;

(3) Only prescription drugs and devices contained in a formulary recommended by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services and approved by the Board shall be dispensed;

(4) The local health department clinic shall obtain a pharmacy permit in accordance with G.S. 90-85.21;

(5) Written procedures for the storage, packaging, labeling and delivery of prescription drugs and devices shall be approved by the Board; and

(6) The pharmacist-manager, or another pharmacist at his direction, shall review dispensing records at least weekly, provide consultation where appropriate, and be responsible to the Board for all dispensing activity at the local health department clinic."

Section 23. G.S. 90-233(a) reads as rewritten:

"(a) A dental hygienist may practice only under the supervision of one or more licensed dentists. Provided, however, that this subsection (a) shall be deemed to be complied with in the case of dental hygienists employed by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services and especially trained by said Department as public health hygienists while performing their duties in the public schools under the direction of a duly licensed dentist."

Section 24. G.S. 90A-21 reads as rewritten:

"**§ 90A-21. Water Treatment Facility Operators Board of Certification.**

(a) Board Membership. -- There is hereby established within the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services a Water Treatment Facility Operators Board of Certification (hereinafter termed the 'Board of Certification') composed of eight members to be appointed by the Governor as follows:

(1) One member who is currently employed as a water treatment facility operator;

(2) One member who is manager of a North Carolina municipality using a surface water supply;

(3) One member who is manager of a North Carolina municipality using a treated groundwater supply;

(4) One member who is employed as a director of utilities, water superintendent, or equivalent position with a North Carolina municipality;

(5) One member employed by a private water utility or private industry and who is responsible for the operation or supervision of a water supply and treatment facility;

(6) One member who is a faculty member of a four-year college or university whose major field is related to water supply;

(7) One member employed by the Department of Environment, Health, and Natural Resources and working in the field of water supply;

(8) One member not certified or regulated under this Article, who shall represent the interest of the public at large.

(b) Terms of Office. -- All members serving on the Board on June 30, 1981, shall complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that the member employed by the Department of ~~Environment, Health, and Natural~~

~~Resources~~ Health and Human Services may serve more than two consecutive terms, and except that each member shall serve until his successor is appointed and qualifies. The Governor may remove any member for good cause shown and shall appoint members to fill unexpired terms. The Governor shall appoint the public member not later than July 1, 1981.

(c) Powers and Responsibilities. -- The Board of Certification shall establish all rules, regulations and procedures with respect to the certification program and advise and assist the Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services in its administration.

(d) Compensation. -- Members of the Board of Certification who are officers or employees of State agencies or institutions shall receive subsistence and travel allowances at the rates authorized by G.S. 138-5.

(e) Officers. -- The Board shall elect a chairman and all other necessary officers to serve one-year terms. A majority of the members of the Board shall constitute a quorum for the transaction of business.

(f) Annual Report. -- The Board shall report annually to the Governor a full statement of its disciplinary and enforcement programs and activities during the year, together with such recommendations as it may deem expedient."

Section 25. G.S. 90A-22(a) reads as rewritten:

"(a) On or before July 1, 1982, the Board of Certification, with the advice and assistance of the Secretary of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, shall classify all surface water treatment facilities and all facilities for treating groundwater supplies that are used, or intended for use, as part of a public water supply system with due regard for the size of the facility, its type, character of water to be treated, other physical conditions affecting the treatment of the water, and with respect to the degree of skill, knowledge, and experience that the operator responsible for the water treatment facility must have to supervise successfully the operation of the facilities so as to adequately protect the public health."

Section 26. G.S. 90A-23 reads as rewritten:

"**§ 90A-23. Grades of certificates.**

The Board of Certification, with the advice and assistance of the Secretary of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, shall establish grades of certification for water treatment facility operators corresponding to the classification of water treatment facilities."

Section 27. G.S. 90A-24 reads as rewritten:

"**§ 90A-24. Operator qualifications and examination.**

The Board of Certification, with the advice and assistance of the Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall establish minimum requirements of education, experience and knowledge for each grade of certification for water treatment facility operators, and shall establish procedures for receiving applications for certification, conducting examinations and making investigations of applicants as may be necessary and appropriate to the end

that prompt and fair consideration be given every application and the water treatment facilities of the State may be adequately supervised by certified operators."

Section 28. G.S. 90A-25(c) reads as rewritten:

"(c) Certificates in an appropriate grade will be issued to operators who, on July 1, 1969, hold certificates of competency issued under the voluntary certification program now being administered through the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services with the cooperation of the North Carolina Water Works Operators Association, the North Carolina Section of the American Water Works Association, and the North Carolina League of Municipalities."

Section 29. G.S. 90A-25.1 reads as rewritten:

"**§ 90A-25.1. Renewal of certificate.**

A certificate expires on December 31 of the year in which it is issued or renewed. The Board, with the advice and assistance of the Secretary of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Board shall renew a certificate if the applicant meets the continuing education requirements imposed as a condition for renewal, pays the required renewal fee plus any renewal fees in arrears, and, if the application is late, pays the late penalty."

Section 30. G.S. 90A-28 reads as rewritten:

"**§ 90A-28. Promotion of training and other powers.**

The Board of Certification and the Secretary of ~~Economic, Health, and Natural Resources are authorized to~~ Health and Human Services may take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article, including, but not limited to, the providing of training for operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for water treatment facility personnel."

Section 31. G.S. 90A-30(a) reads as rewritten:

"(a) Upon the recommendation of the Board of Certification, the Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services or a delegated representative may impose an administrative, civil penalty on any person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity who violates G.S. 90A-29(a). Each day of a continued violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars ($100.00) for each day such violation continues. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation."

Section 32 . G.S. 90A-55(a) reads as rewritten:

"(a) Board Membership. -- The Board shall consist of nine members: the Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services or ~~his~~ the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Environmental Health Division of the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human

Services, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board."

Section 33. G.S. 95-126 reads as rewritten:

"**§ 95-126. Short title and legislative purpose.**

(a) This Article shall be known as the 'Occupational Safety and Health Act of North Carolina' and also may be referred to by abbreviations as 'OSHANC.'

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ~~assure~~ ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:

a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review board for carrying out adjudicatory functions under this Article;

d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer

diminished health, functional capacity, or life expectancy as a result of his work experience;

f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;

h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;

i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;

j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

l. By authorizing the Commissioner to enter into contracts with the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, or any other State or local units, to the end that the Commissioner and the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.

m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina."

Section 34. G.S. 95-131(d) reads as rewritten:

"(d) Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards established in a rule shall be expressed in terms of objective criteria and

of the performance desired. In establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life."

Section 35. G.S. 95-149 reads as rewritten:

"**§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of government.**

The Commissioner ~~is authorized and empowered to~~ may enter into contracts with the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article."

Section 36. G.S. 95-225(c) reads as rewritten:

"(c) For the protection of the public health, the Commission for Health Services shall adopt and the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall enforce rules that establish water quality and water sanitation standards for migrant housing under this Article."

Section 37. G.S. 97-61.1 reads as rewritten:

"**§ 97-61.1. First examination of and report on employee having asbestosis or silicosis.**

When an employee and the Industrial Commission are advised by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services that an employee has asbestosis or silicosis, the employer shall be notified by the Industrial Commission, and the employee, when ordered by the Industrial Commission, shall go to a place designated by the Industrial Commission and submit to X rays and a physical examination by the advisory medical committee, at least one of whom shall conduct the examination, and the member or members of the advisory medical committee conducting the examination shall forward the X rays and findings to the member or members of the committee not present for the physical examination. The employer shall pay the expenses connected with the examination in such amounts as shall be directed by the Industrial Commission. Within 30 days after the completion of the examination, the advisory medical committee shall make a written report signed by all of its members setting forth:

(1) The X rays and clinical procedures used by the committee in arriving at its findings.

(2) Whether or not the claimant has contracted asbestosis or silicosis.

(3) The committee's opinion expressed in percentages of the impairment of the employee's ability to perform normal labor in the same or any other employment.

(4) Any other matter deemed pertinent by the committee.

When a competent physician certifies to the Industrial Commission that the employee's physical condition is such that his movement to the place of examination ordered by the Industrial Commission as herein provided in G.S. 97-61.1, 97-61.3 and 97-61.4 would be harmful or injurious to the health of the employee, the Industrial Commission shall cause the examination of the employee to be made by the advisory medical committee as herein provided at some place in the vicinity of the residence of the employee suitable for the purposes of making such examination."

Section 38. G.S. 97-72(b) reads as rewritten:

"(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) per film examined. The fee per film shall be established by the Secretary of ~~Environment, Health, and Natural Resources.~~ Health and Human Services."

Section 39. G.S. 97-73(b) reads as rewritten:

"(b) The Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall establish a schedule of fees for examinations conducted by the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services pursuant to G.S. 97-60. The fees shall be collected in accordance with rules adopted by the Secretary of ~~Environment, Health, and Natural Resources.~~ Health and Human Services."

Section 40. G.S. 106-65.23 reads as rewritten:

"**§ 106-65.23. Structural Pest Control Division of Department of Agriculture recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.**

There is ~~hereby~~ recreated, within the North Carolina Department of Agriculture, a Division ~~thereof,~~ to be known as the Structural Pest Control ~~Division of said Department.~~ Division. The Commissioner of Agriculture ~~is hereby authorized to~~ may appoint a Director of ~~said~~ the Division whose duties and authority shall be determined by the Commissioner. ~~Said~~ The Director shall act as secretary to the Structural Pest Control Committee ~~herein created.~~ created in this section.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on ~~said~~ the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of ~~said~~ the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of ~~said~~ the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of ~~his~~ the dean's choice from the entomology faculty of ~~said~~ the University to serve on ~~said~~ the Committee at the pleasure of the dean. The Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist ~~in the~~

~~Division of Health Services~~ and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of ~~said~~ the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture, the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Four members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

Section 41. G.S. 106-143 reads as rewritten:

"**§ 106-143. Article construed supplementary.**

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Health Services or the Department of ~~Human Resources~~ Health and Human Services or the Department of Environment and Natural Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, finfish, or other foods, or food products, or the production, handling, or processing ~~thereof; but this Article shall be construed to be in addition thereto.~~ of these items."

Section 42. G.S. 106-168.5 reads as rewritten:

"**§ 106-168.5. Duties of Commissioner upon receipt of application; inspection committee.**

Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the 'committee,' which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the Secretary of ~~Environment, Health, and Natural Resources~~ Health and Human Services and who shall be an employee of the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, and one member who shall be designated by the director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member."

Section 43. G.S. 106-266.6 reads as rewritten:

"**§ 106-266.6. Definitions.**

As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) 'Affiliate' means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) 'Books and records' means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) 'Commission' means the North Carolina Milk Commission created by this Article.

(4) 'Distributor' or 'subdistributor' means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

a. Persons, irrespective of whether any such person is a producer:
   1. Who pasteurize or bottle milk or process milk into fluid milk;
   2. Who sell and/or market fluid milk at wholesale or retail:
      I. To hotels, restaurants, stores or other establishments for consumption on the premises,
      II. To stores or other establishments for resale, or
      III. To consumers;
   3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) 'Health authorities' includes the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.

(6) 'Licensee' means a licensed milk distributor.

(7) 'Market' means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

(8) 'Milk' means the lacteal secretion obtained by the milking of one or more cows and reconstituted milk products derived from the recombining of dry milk solids, evaporated or condensed milk with water, and which is pasteurized, standardized or otherwise processed with a view of selling it as fluid milk in its several forms, whether cultured or with added bacteria or other ingredients, regardless of grade or fat content, including whole milk, lowfat milk, cream, chocolate milk, plain buttermilk, cream buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, liquid milk shake mix, half and half, eggnog, other milk-cream mixtures and the milk portion of any imitation milk. Said term excludes the lacteal secretion of one or more dairy cows where the secretion is to be sold for any other purpose.

(9) 'Person' means any person, firm, corporation or association.

(10) 'Producer' means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.

(11) 'Sanitary regulations' includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State Sanitary Code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

(12) 'Subdistributor' as distinguished from a 'distributor' means one who does not process milk but purchases its milk from a licensed distributor for distribution.

(13) 'Subsidiary' means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner."

Section 44. G.S. 110-91 reads as rewritten:

"**§ 110-91. Mandatory standards for a license.**

The following standards shall be complied with by all child day care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child day care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules 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.~~ Department. Each child shall have a health assessment before being admitted or within 30 days following admission to a child day care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying

board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the ~~Department of Environment, Health, and Natural Resources'~~ Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Program. A record of each child's assessment shall be on file in the records of the facility. However, no health assessment shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in a manner that meets the requirements of Article 6 of Chapter 130A of the General Statutes and the pertinent rules adopted by the Commission for Health Services.

Each child day care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the child day care facility while children are in care.

Nonprofit, tax-exempt organizations that provide prepared meals to day care centers only are considered day care centers for purposes of compliance with appropriate sanitation standards.

(2) Health-Related Activities. -- Each child in a child day care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the State Health Director, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks shall be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each child day care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each child day care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No child day care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. -- Each child day care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. -- Each child day care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child day care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. -- Each child day care facility shall be located in a building that meets the requirements for fire prevention and safe evacuation that apply to child day care facilities as established by the Department of Insurance, subject to adoption by the Commission. Each child day care facility shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements, except that child day care facilities located on State property shall be inspected by an official designated by the Department of Insurance.

(6) Space and Equipment Requirements. -- There shall be no less than 25 square feet of indoor space for each child for which a child day care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the

evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child day care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

(7) Staff-Child Ratio. -- In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws. The staff-child ratios and group sizes for infants and toddlers shall be no less stringent than as follows:

Age	Ratio	Group Size
0 to 12 months	5	10
12 to 24 months	6	12
2 to 3 years	10	20.

(8) Qualifications for Staff. -- Each child day care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted in determining the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age. No person shall be an operator of nor be employed in a child day care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but

also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. -- Each child day care facility shall keep accurate records on each child receiving care in the child day care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each child day care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any child day care facility, except financial records, shall be subject to review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child day care facility and shall constitute a cause for revoking or denying a license to this child day care facility.

(10) Each operator or staff member shall truly and honestly show each child in that person's care true love, devotion and tender care.

Each child day care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child day care facilities and may not be used by any operator or staff member of any child day care facility, except that corporal punishment may be used in religious sponsored child day care facilities as defined in G.S. 110-106, only if (i) the religious sponsored child day care facility files with the Department a notice stating that

corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child day care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child day care facilities shall clearly state the prohibition on corporal punishment.

(11) Staff Development. -- The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include requirements for ongoing in-service training for all staff.

(12) Planned Age Appropriate Activities. -- Each child day care facility shall have a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age appropriate activities available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan. The Commission shall establish minimum standards for age-appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3).

(13) Transportation. -- All child day care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles. Each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and regulations concerning the operation of a motor vehicle. Children may never be left unattended in a vehicle.

The ratio of adults to children in child day care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation."

Section 45. G.S. 110-92 reads as rewritten:

"**§ 110-92. Duties of State and local agencies.**

When requested by an operator of a day-care facility or by the Secretary it shall be the duty of local and district health departments to visit and inspect a day-care

facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum sanitation standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department on forms approved and provided by the ~~Department of Environment, Health, and Natural Resources.~~ Department.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Section 46. The heading for Article 1 of Chapter 111 of the General Statutes reads as rewritten:

"ARTICLE 1.

"General Duties of Department of ~~Human Resources.~~ Health and Human Services."

Section 47. G.S. 115C-106(a) reads as rewritten:

"(a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this section and in G.S. 115C-122 shall be excluded from service or education for any reason whatsoever. This policy shall be the practice of the State for children from birth through age 21 and the State requires compliance by all local education agencies and local school administrative units, all local human ~~resources~~ services agencies including, but not limited to, local health departments, local social service departments, community mental health centers and all State departments, agencies, institutions except institutions of higher education, and private providers which are recipients of general funds as these funds are defined in G.S. 143-1."

Section 48. G.S. 115C-118 reads as rewritten:

"**§ 115C-118. Functions.**

The centers shall have the following functions:

(1) To provide in-service training to all special education teachers and other professionals as defined by the Superintendent.

(2) To develop in kindergarten and primary grade teachers the necessary skills to detect potential special education needs and the capability to plan special educational programs.

(2a) To provide in-service training for all teachers in the identification and education of learning disabled children.

(3) To provide in-service training and consultative services to a parent or guardian of a child with special needs and to appropriate public school administrative and management personnel.

(4) To work in concert with the various local human ~~resources~~ services agencies to the end that multiple and duplicative services provided at various times and by various agencies of the State may be obviated.

(5) To conduct an in-depth evaluation of the impact of in-service training on the delivery of services to children with special needs within the public schools on an annual basis in compliance with such rules and regulations as the Superintendent may promulgate."

Section 49. G.S. 115C-120 reads as rewritten:

"**§ 115C-120. Rules and regulations.**

The Superintendent shall develop and promulgate appropriate rules and regulations for the operation of the centers subject to the approval of the State Board. Such rules and regulations shall prescribe the precise operational responsibility of the centers and shall include a description of the operational relationship that shall exist with the various local human ~~resources~~ services agencies."

Section 49.1. G.S. 115C-122 reads as rewritten:

"**§ 115C-122. Early childhood development program; evaluation and placement of children.**

The General Assembly of North Carolina declares that the public policy of North Carolina is defined as follows to carry out the policies stated in G.S. 115C-106:

(1) The State shall provide for a comprehensive early childhood development program by emphasizing preventative and remedial measures designed to provide the services which will enable children to develop to the maximum level their physical, mental, social, and emotional potentials and to strengthen the role of the family as the first and most fundamental influence on child development. The General Assembly finds that the complexity of early childhood development precludes the enactment of legislation which is of a sufficiently comprehensive nature to encompass all possible implications. The Departments of Public Instruction and ~~Human Resources~~ Health and Human Services shall, therefore, jointly develop an early childhood development program plan with flexibility sufficient to meet the State's policy as set forth in this subdivision. Said plan shall provide for the operation of a statewide early childhood development program no later than June 30, 1983.

(2) The State requires a system of educational opportunities for all children with special needs and requires the identification and evaluation of the needs of children and the adequacy of various education programs before placement of children, and shall

provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter.

(3) The State shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child. Each local school administrative unit shall develop program plans to meet the educational requirements of children with special needs and each local human ~~resources~~ services agency shall develop program plans to meet the human service requirements of children with special needs in accordance with program standards and in a planning format as shall be prescribed by the State Board of Education and the Department of ~~Human Resources~~ Health and Human Services respectively.

The General Assembly intends that the educational program and human service program requirements of Session Laws 1973, Chapter 1293, shall be realized no later than June 30, 1982. The General Assembly further intends that currently imposed barriers to educational and human service opportunities for children with special needs by reason of a single standardized test, income, federal regulations, conflicting statutes, or any other barriers are hereby abrogated; except that with respect to barriers caused by reason of income, it shall be permissible for the State or any local education agency or local human ~~resources~~ services agency to charge fees for special services rendered, or special materials furnished to a child with special needs, his parents, guardian or persons standing **in loco parentis** unless the imposition of such fees would prevent or substantially deter the child, his parents, guardian, or persons standing **in loco parentis** from availing themselves of or receiving such services or materials.

(4) It is recognized that children have a variety of characteristics and needs, all of which must be considered if the potential of each child is to be realized; that in order to accomplish this the State must develop a full range of service and education programs, and that a program must actually benefit a child or be designed to benefit a particular child in order to provide such child with appropriate educational and service opportunities. The General Assembly requires that all programs employ least restrictive alternatives as shall be defined by the Departments of Public Instruction and Human Resources."

Section 50. G.S. 115C-323 reads as rewritten:

"**§ 115C-323. Employee health certificate.**

All public school employees upon initial employment, and those who have been separated from public school employment more than one school year, including

superintendents, supervisors, principals, teachers, and any other employees in the public schools of the State, shall file in the office of the superintendent, before assuming his duties, a certificate from a physician licensed to practice medicine in the State of North Carolina, certifying that said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his duties. A local school board or a superintendent may require any person herein named to take a physical examination when deemed necessary.

Any public school employee who has been absent for more than 40 successive school days because of a communicable disease must, before returning to work, file with the superintendent a physician's certificate certifying that the individual is free from any communicable disease.

The examining physician shall make the aforesaid certificates on an examination form supplied by the Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the Superintendent of Public Instruction, with approval of the Secretary of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, and such rules and regulations may include the requirement of an X-ray chest examination for all new employees of the public school system.

It shall be the duty of the superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 51. G.S. 115C-522(c) reads as rewritten:

"(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for."

Section 52. G.S. 120-205(a) reads as rewritten:

"(a) This commission shall be composed of 21 members appointed as follows:

(1) Seven members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives. Of these members, one shall be a Chair of the

House Appropriations Subcommittee on ~~Human Resources;~~ Health and Human Services;

(2) Seven members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. Of these members, one shall be the Chair of the Senate ~~Human Resources~~ Health and Human Services Appropriations Committee;

(3) Three members who are representatives of Coalition 2001, appointed by the Governor. Of these members, one shall be a representative from mental health, one from developmental disabilities, and one from substance abuse services;

(4) Two members of the public, appointed by the Speaker of the House of Representatives. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the Speaker of the House of Representatives may appoint any county commissioner; and

(5) Two members of the public, appointed by the President Pro Tempore of the Senate. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the President Pro Tempore of the Senate may appoint any county commissioner."

Section 53. G.S. 122C-112(a) reads as rewritten:

"(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(6a) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid;

(12) Carry out G.S. 122C-361; and

(13) Ensure, in cooperation with other appropriate agencies, that all types of early intervention services specified in the Individuals with Disabilities Education Act (IDEA), P.L. 102-119, the federal early intervention legislation, are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly.

The Secretary shall coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with ~~the Department of Environment, Health, and Natural Resources,~~ the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies;

(14) Adopt rules to be followed in the determination of eligibility for, and to ensure the provision of services for, eligible assaultive and violent children as defined in G.S. 122C-3(13a); [and]

(15) Upon the death of any prospective or confirmed Thomas S. class member as identified in Thomas S. et al. vs. Britt, (C-C-82-0418-M, Western District) not residing in a State facility listed in G.S. 122C-181, investigate the circumstances leading to that death. The investigation shall analyze any unusual circumstances relating to the death. The Secretary shall adopt rules to implement this subsection. The Secretary shall have access to all medical records,

hospital records, and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this subsection, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records."

Section 54. G.S. 130A-1.1 reads as rewritten:

"**§ 130A-1.1. Mission and essential services.**

(a) The General Assembly recognizes that unified purpose and direction of the public health system is necessary to ~~assure~~ ensure that all citizens in the State have equal access to essential public health services. The General Assembly declares that the mission of the public health system is to promote and contribute to the highest level of health possible for the people of North Carolina by:

(1) Preventing health risks and disease;
(2) Identifying and reducing health risks in the community;
(3) Detecting, investigating, and preventing the spread of disease;
(4) Promoting healthy lifestyles;
(5) Promoting a safe and healthful environment;
(6) Promoting the availability and accessibility of quality health care services through the private sector; and
(7) Providing quality health care services when not otherwise available.

(b) As used in this section, the term 'essential public health services' means those services that the State shall ~~assure~~ ensure because they are essential to promoting and contributing to the highest level of health possible for the citizens of North Carolina. The ~~Department~~ Departments of ~~Environment, Health, and Natural Resources~~ Environment and Natural Resources and Health and Human Services shall attempt to ~~assure~~ ensure within the resources available to ~~it~~ them that the following essential public health services are available and accessible to all citizens of the State, and shall account for the financing of these services:

(1) Health Support:
  a. Assessment of health status, health needs, and environmental risks to health;
  b. Patient and community education;
  c. Public health laboratory;
  d. Registration of vital events;
(2) Environmental Health:
  a. Lodging and institutional sanitation;
  b. On-site domestic sewage disposal;
  c. Water and food safety and sanitation; and
(3) Personal Health:
  a. Child health;
  b. Chronic disease control;
  c. Communicable disease control;
  d. Dental public health;

e. Family planning;
f. Health promotion and risk reduction;
g. Maternal health.

The Commission for Health Services shall determine specific services to be provided under each of the essential public health services categories listed above.

(c) The General Assembly recognizes that there are health-related services currently provided by State and local government and the private sector that are important to maintaining a healthy social and ecological environment but that are not included on the list of essential public health services required under this section. Omission of these services from the list of essential public health services shall not be construed as an intent to prohibit or decrease their availability. Rather, such omission means only that the omitted services may be more appropriately assured by government agencies or private entities other than the public health system.

(d) The list of essential public health services required by this section shall not be construed to limit or restrict the powers and duties of the Commission for Health Services or the ~~Department~~ Departments of ~~Environment, Health, and Natural Resources~~ Environment and Natural Resources and Health and Human Services as otherwise conferred by State law."

Section 55. G.S. 130A-2 reads as rewritten:

"**§ 130A-2. Definitions.**

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) 'Commission' means the Commission for Health Services.
(2) 'Department' means the Department of ~~Environment, Health, and Natural Resources.~~ Health and Human Services.
(3) '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.
(4) 'Local board of health' means a district board of health or a county board of health.
(5) 'Local health department' means a district health department or a county health department.
(6) 'Local health director' means the administrative head of a local health department appointed pursuant to this Chapter.
(7) 'Person' means an individual, corporation, company, association, partnership, unit of local government or other legal entity.
(8) 'Secretary' means the Secretary of ~~Environment, Health, and Natural Resources.~~ Health and Human Services.
(9) 'Unit of local government' means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) 'Vital records' means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

Section 56. G.S. 130A-4 reads as rewritten:

"**§ 130A-4. Administration.**

(a) ~~The~~ Except as provided in subsection (c) of this section, the Secretary shall ~~have the authority and responsibility to~~ administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall ~~have the authority and responsibility to~~ administer the programs of the local health department and ~~to~~ enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 9 and 11 of this Chapter and the rules of the Commission."

Section 57. G.S. 130A-4.1 reads as rewritten:

"**§ 130A-4.1. State funds for maternal and child health care/non-supplanting.**

(a) The Department ~~of Environment, Health, and Natural Resources~~ shall ensure that local health departments do not reduce county appropriations for maternal and child health services provided by the local health departments because they have received State appropriations for this purpose.

(b) All income earned by local health departments for maternal and child health programs supported in whole or in part from State or federal funds, received from the ~~Department of Environment, Health, and Natural Resources,~~ Department, shall be budgeted and expended by local health departments to further the objectives of the program that generated the income."

Section 58. G.S. 130A-4.2 reads as rewritten:

"**§ 130A-4.2. State funds for health promotion/non-supplanting.**

The Department ~~of Environment, Health, and Natural Resources~~ shall ensure that local health departments do not reduce county appropriations for health promotion services provided by the local health departments because they have received State appropriations for this purpose."

Section 60. G.S. 130A-17 reads as rewritten:

"**§ 130A-17. Right of entry.**

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to ~~carry out~~ enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of the Department of Environment and Natural Resources shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 11 of this Chapter."

Section 61. G.S. 130A-18 reads as rewritten:

"**§ 130A-18. Injunction.**

(a) If a person shall violate any provision of this Chapter or the rules adopted by the Commission or rules adopted by a local board of health, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of the Department of Environment and Natural Resources shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 11 of this Chapter."

Section 62. G.S. 130A-19 reads as rewritten:

"**§ 130A-19. Abatement of public health nuisance.**

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environment and Natural Resources shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 11 of this Chapter."

Section 63. G.S. 130A-20 reads as rewritten:

"**§ 130A-20. Abatement of an imminent hazard.**

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may, after notice to or reasonable attempt to notify the owner, enter upon any property and take any action necessary to abate the imminent hazard. The Department or the local health department shall have a lien on the property for the cost of the abatement of the imminent hazard in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A and the lien may be enforced as provided therein. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action.

(b) The Secretary of Environment and Natural Resources shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 11 of this Chapter."

Section 63.1. G.S. 130A-21(d) reads as rewritten:

"(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture. The Department ~~of Human Resources~~ and the Department of Agriculture are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority."

Section 64. G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment 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. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars ($25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars ($1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
(2) The duration and gravity of the violation.
(3) The effect on air quality.
(4) The cost of rectifying the damage.
(5) The amount of money the violator saved by noncompliance.
(6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
(7) The cost to the State of the enforcement procedures.
(8) If applicable, the size of the renovation and demolition involved in the violation.

Administrative penalties imposed by the Secretary under this subsection or subsection (b2) of this section shall be credited to the General Fund as nontax revenue.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars ($10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(c) The Secretary <u>of Environment and Natural Resources</u> may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated

using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of the Department of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environment and Natural Resources may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of ~~the~~ an administrative penalty authorized under this section whenever a person:

(1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars ($50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars ($300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection."

Section 65. G.S. 130A-23 reads as rewritten:

"**§ 130A-23. Suspension and revocation of permits and program participation.**

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 9 and 11 of this Chapter."

Section 66. G.S. 130A-24 reads as rewritten:

"**§ 130A-24. Appeals procedure.**

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) Any person appealing an action taken by the Department pursuant to this Chapter or rules of the Commission shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later than 30 days after notice of the action which confers the right of appeal unless a federal statute or regulation provides for a different time limitation.

The time limitation imposed under this subsection shall commence when notice of the agency decision is given to all persons aggrieved. Such notice shall be provided to all persons known to the agency by personal delivery or by the placing of notice in an official depository of the United States Postal Service addressed to the person at the latest address provided to the agency by the person.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with subsections (b), (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than 10 days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51.

(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environment and Natural Resources pursuant to Articles 9 and 11 of this Chapter."

Section 67. G.S. 130A-26.1(d) reads as rewritten:

"(d) 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.~~ Department of Environment and Natural Resources. 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 the 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 of permit limitations causing no significant harm to the environment or risk to the 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~~ Department of Environment and Natural Resources at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the ~~Department~~ Department of Environment and Natural Resources to develop or use written civil enforcement guidelines."

Section 68. G.S. 130A-27 reads as rewritten:

"**§ 130A-27. Recovery of money.**

The Secretary or the Secretary of Environment and Natural Resources may institute an action in the county where the action arose or the county where the defendant resides to recover any money, other property or interest in property or the monetary value of goods or services provided or paid for by the Department or the Department of Environment and Natural Resources which are wrongfully paid or transferred to a person under a program administered by the Department or the Department of Environment and Natural Resources pursuant to this Chapter."

Section 69. G.S. 130A-33.30 reads as rewritten:

"**§ 130A-33.30. Commission of Anatomy -- creation; powers and duties.**

There is ~~hereby~~ created the Commission of Anatomy ~~of~~ in the Department ~~of Environment, Health, and Natural Resources~~ with the power and duty to adopt rules for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission ~~is authorized to~~ may receive dead bodies pursuant to G.S. 130A-415 and to be a donee of a body or parts thereof pursuant to Part 3, Article 16 of Chapter 130A of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules adopted by the Commission."

Section 70. G.S. 130A-33.31 reads as rewritten:

"**§ 130A-33.31. Commission of Anatomy -- Members; selection; term; chairman; quorum; meetings.**

(a) The Commission of Anatomy shall consist of five members, one representative from the field of mortuary science, and one each from The University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary ~~of Environment, Health, and Natural Resources~~ shall appoint from such recommendations a member to the

Commission. The president of the State Board of Mortuary Science shall appoint the representative from the field of mortuary science to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The Secretary shall determine the terms of the original members.

(b) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Secretary ~~shall have the power to~~ shall remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

(d) The Commission shall elect a ~~chairman~~ chair annually from its own membership.

(e) A majority of the Commission shall constitute a quorum for the transaction of business.

(f) The Commission shall meet at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of three members.

(g) All clerical and other services required by the Commission shall be supplied by the ~~Secretary of Environment, Health, and Natural Resources.~~ Secretary."

Section 71. G.S. 130A-33.40 reads as rewritten:

"**§ 130A-33.40. Governor's Council on Physical Fitness and Health -- creation; powers; duties.**

There is hereby created the Governor's Council on Physical Fitness and Health in the ~~Department of Environment, Health, and Natural Resources.~~ Department. The Council shall have the following functions and duties:

(1) To promote interest in the area of physical fitness; to consider the need for new State programs in the field of physical fitness; to enlist the active support of individual citizens, professional and civic groups, amateur and professional athletes, voluntary organizations, State and local government agencies, private industry and business, and community recreation programs in efforts to improve the physical fitness and ~~thereby~~ the health of the citizens of North Carolina;

(2) To examine current programs of physical fitness available to the people of North Carolina, and to make recommendations to the Governor for coordination of programs to prevent duplication of such services; to support programs of physical fitness in the public school systems; to develop cooperative programs with medical, dental, and other groups; to maintain a liaison with government, private and other agencies concerning physical fitness programs; to stimulate research in the area of physical fitness; to sponsor physical fitness workshops, clinics, conferences, and other related activities pertaining to physical fitness throughout the State;

(3) To serve as an agency for recognizing outstanding developments, contributions, and achievements in physical fitness in North Carolina;

(3a) To serve as the North Carolina sanctioning body for the State Games and for other competitive athletic events for which sanctioning by the State is required; and

(4) To make an annual report to the Governor and to the ~~Secretary of Environment, Health, and Natural Resources,~~ Secretary, including ~~therein~~ suggestions and recommendations for the furtherance of the physical fitness of the people of North Carolina."

Section 72. G.S. 130A-33.41 reads as rewritten:

"**§ 130A-33.41. The Governor's Council on Physical Fitness and Health -- members; selection; quorum; compensation.**

The Governor's Council on Physical Fitness in the Department ~~of Environment, Health, and Natural Resources~~ shall consist of 10 members, including a ~~chairman.~~ chair.

(1) The composition of the Council shall be as follows: one member of the Senate appointed by the President Pro Tempore of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, and eight persons from the health care professions, the fields of business and industry, physical education, recreation, sports and the general public. The eight nonlegislative members of the Council shall be appointed by the Governor to serve at ~~his~~ the Governor's pleasure.

(2) The eight initial nonlegislative members of the Council shall be appointed ~~thusly:~~ as follows: two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years. At the end of the respective terms of office of these initial members, all succeeding appointments of nonlegislative members shall be for terms of four years; nonlegislative members shall serve no more than two consecutive four-year terms; all unexpired terms due to resignation, death, disability, removal or refusal to serve shall be filled by a qualified person appointed by the Governor for the balance of the unexpired term.

(3) Legislative members of the Council shall serve two-year terms beginning and ending on July 1 of odd-numbered years, and shall serve no more than two consecutive terms.

(4) Members of the Governor's Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 or 138-6, or travel and subsistence expenses under G.S. 120-3.1, as appropriate.

(5) The Council shall meet no more than quarterly.

(6) A majority of the Governor's Council shall constitute a quorum for the transaction of business."

Section 73. G.S. 130A-33.43 reads as rewritten:

"**§ 130A-33.43. Minority Health Advisory Council.**

There is established the Minority Health Advisory Council in the ~~Department of Environment, Health, and Natural Resources.~~ Department. The Council shall have the following duties and responsibilities:

(1) To make recommendations to the Governor and the Secretary ~~of Environment, Health, and Natural Resources~~ aimed at improving the health status of North Carolina's minority populations;

(2) To identify and examine the limitations and problems associated with existing laws, regulations, programs and services related to the health status of North Carolina's minority populations;

(3) To examine the financing and access to health services for North Carolina's minority populations;

(4) To identify and review health promotion and disease prevention strategies relating to the leading causes of death and disability among minority populations; and

(5) To advise the Governor and the Secretary ~~of Environment, Health, and Natural Resources~~ upon any matter which the Governor or Secretary may refer to it."

Section 74. G.S. 130A-33.44 reads as rewritten:

"**§ 130A-33.44. Minority Health Advisory Council -- members; selection; quorum; compensation.**

(a) The Minority Health Advisory Council in the Department ~~of Environment, Health, and Natural Resources~~ shall consist of 15 members to be appointed as follows:

(1) Five members shall be appointed by the Governor. Members appointed by the Governor shall be representatives of the following: health care providers, public health, health related public and private agencies and organizations, community-based organizations, and human ~~resources~~ services agencies and organizations.

(2) Five members shall be appointed by the Speaker of the House of Representatives, two of whom shall be members of the House of Representatives, and at least one of whom shall be a public member. The remainder of the Speaker's appointees shall be representative of any of the entities named in subdivision (1) of this ~~section.~~ subsection.

(3) Five members shall be appointed by the President Pro Tempore of the Senate, two of whom shall be members of the Senate, and at least one of whom shall be a public member. The remainder of the President Pro Tempore's appointees shall be representative of

any of the entities named in subdivision (1) of this ~~section.~~ subsection.

(4) Of the members appointed by the Governor, two shall serve initial terms of one year, two shall serve initial terms of two years, and one shall serve an initial term of three years. Thereafter, the Governor's appointees shall serve terms of four years.

(5) Of the nonlegislative members appointed by the Speaker of the House of Representatives, two shall serve initial terms of two years, and one shall serve an initial term of three years. Thereafter, nonlegislative members appointed by the Speaker of the House of Representatives shall serve terms of four years. Of the nonlegislative members appointed by the President Pro Tempore of the Senate, two shall serve initial terms of two years, and one shall serve an initial term of three years. Thereafter, nonlegislative members appointed by the President Pro Tempore of the Senate shall serve terms of four years. Legislative members of the Council shall serve two-year terms.

(b) The Chairperson of the Council shall be elected by the Council from among its membership.

(c) The majority of the Council shall constitute a quorum for the transaction of business.

(d) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, or travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, as applicable.

(e) All clerical support and other services required by the Council shall be provided by the ~~Department of Environment, Health, and Natural Resources.~~ Department."

Section 75. G.S. 130A-33.50 reads as rewritten:

"**§ 130A-33.50. Advisory Committee on Cancer Coordination and Control established; membership, compensation.**

(a) The Advisory Committee on Cancer Coordination and Control is ~~created~~ established in the ~~Department of Environment, Health, and Natural Resources.~~ Department.

(b) The Committee shall have 24 members, including the Secretary of the Department ~~of Environment, Health, and Natural Resources, who shall chair the Committee.~~ or the Secretary's designee. The members of the Committee shall elect a chair and vice-chair from among the Committee membership. The Committee shall meet at the call of the chair. Six of the members shall be legislators, three of whom shall be appointed by the Speaker of the House of Representatives, and three of whom shall be appointed by the President Pro Tempore of the Senate. Two of the members shall be cancer survivors, one of whom shall be appointed by the Speaker of the House of Representatives, and one of whom shall be appointed by the

President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) One member from the Department of ~~Environment, Health,~~ Environment and Natural Resources;

(2) Three members, one from each of the following: the ~~Department of Human Resources,~~ Department, the Department of Public Instruction, and the North Carolina Community College System;

(3) Four members representing the cancer control programs at North Carolina medical schools, one from each of the following: the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Duke University School of Medicine, and the East Carolina University School of Medicine;

(4) One member who is an oncology nurse representing the North Carolina Nurses Association;

(5) One member representing the Cancer Committee of the North Carolina Medical Society;

(6) One member representing the Old North State Medical Society;

(7) One member representing the American Cancer Society, North Carolina Division, Inc.;

(8) One member representing the North Carolina Hospital Association;

(9) One member representing the North Carolina Association of Local Health Directors;

(10) One member who is a primary care physician licensed to practice medicine in North Carolina.

Except for the ~~Secretary of the Department of Environment, Health, and Natural Resources,~~ Secretary, the members shall be appointed for staggered four-year terms and until their successors are appointed and qualify. However, the following appointees shall serve initial two-year terms: two of the legislators appointed by the Speaker of the House of Representatives; one of the legislators appointed by the President Pro Tempore of the Senate; the cancer survivor appointed by the President Pro Tempore of the Senate; and the members representing the ~~Department of Human Resources,~~ Department, the Department of Public Instruction, the University of North Carolina at Chapel Hill School of Medicine, the Bowman Gray School of Medicine, the Cancer Committee of the North Carolina Medical Society, the Old North State Medical Society, the North Carolina Hospital Association, and the North Carolina Association of Local Health Directors. The Governor may remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term.

(c) The Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor shall make their appointments to the Committee not later than 30 days after the adjournment of the 1993 Regular Session of the General

Assembly. A vacancy on the Committee shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(d) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the Committee shall constitute a quorum for the transaction of its business.

(f) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. The Secretary ~~of Environment, Health, and Natural Resources~~ shall provide clerical and other support staff services needed by the Committee."

Section 76. G.S. 130A-131.2 reads as rewritten:

"**§ 130A-131.2. Council role.**

The Council shall advise the Department ~~of Environment, Health, and Natural Resources~~ and the Commission for Health Services on the needs of persons with sickle cell syndrome, and shall make recommendations to meet these needs. Such recommendations shall include but not be limited to recommendations for legislative action and for rules regarding the services of the Sickle Cell Program. The Council shall develop procedures to facilitate its operation. All clerical and other services required by the Council shall be furnished by the Department ~~of Environment, Health, and Natural Resources~~ within budget limitations."

Section 77. G.S. 130A-131.15(c) reads as rewritten:

"(c) The Department shall evaluate all of the adolescent pregnancy prevention projects funded as a result of this program at least yearly and shall report its findings to the Commission for Health Services, the Joint Legislative Commission on Governmental Operations, and the Chairmen of the House Appropriations Subcommittee on ~~Natural and Economic Resources,~~ Health and Human Services, and the Senate Appropriations Committee on ~~Natural and Economic Resources~~ Health and Human Services by April 1 of each year. The evaluation shall be conducted by a firm or individual external to the Department. Any evaluation of these projects shall include a study of the effectiveness of the project in reducing the pregnancy rate within the target population."

Section 78. G.S. 130A-231 reads as rewritten:

"**§ 130A-231. Agreements between the State Health Director and the Division of Marine Fisheries.**

Nothing in this Part is intended to limit the authority of the Division of Marine Fisheries of the Department of Environment and Natural Resources to regulate aspects of the harvesting, processing and handling of scallops, shellfish and crustacea relating to conservation of the fisheries resources of the State. The State Health Director and the Division of Marine Fisheries are authorized to enter into agreements respecting the duties and responsibilities of each agency as to the harvesting, processing and handling of scallops, shellfish and crustacea."

Section 79. G.S. 130A-235 reads as rewritten:

"**§ 130A-235. Regulation of sanitation in institutions.**

For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the ~~Department of Human Resources.~~ Department. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department ~~of Human Resources~~ shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department ~~of Human Resources~~ may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10)."

Section 80. G.S. 130A-280 reads as rewritten:

"**§ 130A-280. Scope.**

This Article provides for the regulation of public swimming pools in the State as they may affect the public health and safety. As used in this Article, the term 'public swimming pool' means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, motel, apartment, boarding house, athletic club, or other membership facility pools and spas. This Article does not apply to a private pool serving a single family dwelling and used only by the residents of the dwelling and their guests. This Article also does not apply to therapeutic pools used in physical therapy programs operated by medical facilities licensed by the Department ~~of Human Resources~~ or operated by a licensed physical therapist, nor to therapeutic chambers drained, cleaned, and refilled after each individual use."

Section 81. G.S. 130A-290(a) reads as rewritten:

"(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(1a) 'Chemical or portable toilet' means a self-contained mobile toilet facility and holding tank and includes toilet facilities in recreational vehicles.

(1b) 'Chlorofluorocarbon refrigerant' means any of the following when used as a liquid heat transfer agent in a mechanical refrigeration

system: carbon tetrachloride, chlorofluorocarbons, halons, or methyl chloroform.

(2) 'Closure' means the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(3) 'Commercial' when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(4) 'Construction' or 'demolition' when used in connection with 'waste' or 'debris' means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(4a) 'Department' means the Department of Environment and Natural Resources.

(5) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 1.

(6) 'Disposal' means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(7) 'Garbage' means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(8) 'Hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(9) 'Hazardous waste facility' means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(10) 'Hazardous waste generation' means the act or process of producing hazardous waste.

(11) 'Hazardous waste disposal facility' means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(12) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(13) 'Hazardous waste management program' means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(13a) 'Industrial solid waste' means solid waste generated by manufacturing or industrial processes that is not hazardous waste.

(14) 'Inert debris' means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) 'Land-clearing debris' means solid waste which is generated solely from land-clearing activities.

(16) 'Landfill' means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(17) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(18) 'Medical waste' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of 'solid waste' in this section.

(18a) 'Municipal solid waste' means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(18b) 'Municipal solid waste management facility' means any publicly or privately owned solid waste management facility permitted by the Department that receives municipal solid waste for processing, treatment, or disposal.

(19) 'Natural resources' means all materials which have useful physical or chemical properties which exist, unused, in nature.

(20) 'Open dump' means a solid waste disposal site which is not a sanitary landfill.

(21) 'Operator' means 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.

(22) 'Person' means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(23) 'Processing' means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) 'Recovered material' means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

(25) 'RCRA' means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) 'Recyclable material' means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(27) 'Recycling' means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(28) 'Refuse' means all nonputrescible waste.

(28a) 'Refuse-derived fuel' means fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(29) 'Resource recovery' means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(30) 'Reuse' means a process by which resources are reused or rendered usable.

(31) 'Sanitary landfill' means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(31a) 'Secretary' means the Secretary of Environment and Natural Resources.

(32) 'Septage' means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Domestic treatment plant septage does not include ash generated during the firing of domestic treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or business in a treatment works where the designed disposal is subsurface. Industrial or commercial treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. Industrial or commercial treatment plant septage does not include ash generated during the firing of industrial or commercial treatment plant septage in an incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(33) 'Septage management firm' means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community wastewater systems that treat or dispose septage.

(34) 'Sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(35) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.

2. Irrigation return flows.

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the

Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material.

(36) 'Solid waste disposal site' means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(37) 'Solid waste generation' means the act or process of producing solid waste.

(38) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(39) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.

(40) 'Special wastes' means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

(41) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(41a) 'Tire-derived fuel' means a form of fuel derived from scrap tires.

(42) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. 'Treatment' includes any activity or

processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(43) 'Unit of local government' means a county, city, town or incorporated village.

(44) 'White goods' includes refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

(45) 'Yard trash' means solid waste consisting solely of vegetative matter resulting from landscaping maintenance."

Section 82. G.S. 130A-334 reads as rewritten:

"**§ 130A-334. Definitions.**

The following definitions shall apply throughout this Article:

(1) 'Construction' means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

(1a) 'Department' means the Department of Environment and Natural Resources.

(2) Repealed by Session Laws 1985, c. 462, s. 18.

(2a) 'Industrial process wastewater' means any water-carried waste resulting from any process of industry, manufacture, trade, or business.

(3) 'Location' means the initial placement for occupancy of a residence, place of business or place of public assembly.

(3a) 'Maintenance' means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.

(4), (5) Repealed by Session Laws 1985, c. 462, s. 18.

(6) 'Place of business' means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.

(7) 'Place of public assembly' means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

(7a) 'Plat' means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. 'Plat' also means, for subdivision lots approved by the local planning authority and recorded with the county register of deeds, a copy of the recorded subdivision plat that is accompanied by a site plan that is drawn to scale.

(7b) 'Pretreatment' means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.

(8) 'Public or community wastewater system' means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.

(9) 'Relocation' means the displacement of a residence or place of business from one site to another.

(9a) 'Repair' means the extension, alteration, replacement, or relocation of existing components of a wastewater system.

(10) 'Residence' means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.

(10a) 'Secretary' means the Secretary of Environment and Natural Resources.

(11) Repealed by Session Laws 1992, c. 944, s. 3.

(12) 'Septic tank system' means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

(13) 'Sewage' means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

(13a) 'Site plan' means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.

(14) 'Wastewater' means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(15) 'Wastewater system' means a system of wastewater collection, treatment, and disposal in single or multiple components, including a privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste."

Section 83. G.S. 130A-336(d) reads as rewritten:

"(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department ~~of Environment, Health, and Natural Resources~~ of Environment and Natural Resources may withhold public health funding from that local health department."

Section 84. G.S. 130A-342(c) reads as rewritten:

"(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the Department ~~of Environment, Health, and Natural Resources~~ annually."

Section 85. G.S. 130A-423 reads as rewritten:

"**§ 130A-423. North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy; relationship to federal law; subrogation.**

(a) There is established the North Carolina Childhood Vaccine-Related Injury Compensation Program.

(b) The rights and remedies granted the claimant, the claimant's parent, guardian ad litem, guardian, or personal representative shall exclude all other rights and remedies of the claimant, his parent, guardian ad litem, guardian, or personal representative against any respondent at common law or otherwise on account of ~~such~~ injury, illness, disability, death, or condition. If ~~such~~ an action is filed, it shall be dismissed, with prejudice, on the motion of any party under law.

(b1) A claimant may file a petition pursuant to this Article only after ~~such~~ the claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting ~~such~~ the claimant to file a civil action for damages for a vaccine-related injury or death or if ~~such~~ the claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any ~~such~~ action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether ~~such~~ an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting ~~such~~ a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department ~~and the Department of Human Resources~~ pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

(e) In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

(1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

(2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary ~~and the Secretary of Human Resources~~ a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if any reimbursement is owed by the plaintiff to ~~either department,~~ the Department, the defendant shall pay the reimbursable amounts, as determined by ~~each~~ the Secretary, directly to the ~~department to which such reimbursement is owed.~~ Department. This payment shall discharge the plaintiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.

(3) If:

a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and

b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and

c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a

claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant.

(f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission."

Section 86. G.S. 130A-427 reads as rewritten:

"**§ 130A-427. Commission awards for vaccine-related injuries; duties of Secretary.**

(a) Upon determining that a claimant has sustained a vaccine-related injury, the Commission shall make an award providing compensation or services for any or all of the following:

(1) Actual and projected reasonable expenses of medical care, developmental evaluation, special education, vocational training, physical, emotional or behavioral therapy, and residential and custodial care and service expenses, that cannot be provided by the Department ~~and the Department of Human Resources~~ pursuant to subdivision (5) of this subsection;

(2) Loss of earnings and projected earnings, determined in accordance with generally accepted actuarial principles;

(3) Noneconomic, general damages arising from pain, suffering, and emotional distress;

(4) Reasonable attorneys fees;

(5) Needs that the Secretary ~~and the Secretary of Human Resources~~ determines on a case-by-case basis shall be met by medical, health, developmental evaluation, special education, vocational training, physical, emotional, or behavioral therapy, residential and custodial care, and other essential and necessary services, to be provided the injured party by the programs and services administered by the ~~Department and the Department of Human Resources.~~ Department. The Secretary ~~and the Secretary of Human Resources~~ shall develop an itemized list of the service needs of the injured party upon review and evaluation of the injured party's medical record and shall present it to the Commission prior to the Commission's determination. In the event that the Commission's award includes the provision of any of these services, the Secretary ~~and the Secretary of Human Resources~~ shall develop a comprehensive, coordinated plan for the delivery of these services to the injured party. Notwithstanding any other provision of State law, the Secretary ~~and the Secretary of Human Resources~~ shall waive all eligibility criteria in determining eligibility for services provided by the Department ~~and the Department of Human Resources~~ under the plan of care developed pursuant to this subdivision. If the award includes any such services, these services shall be provided by the Department ~~and~~

~~the Department of Human Resources~~ free of any cost to the injured party.

(b) The money compensation component of the award may not be made pursuant to this section in excess of an aggregate amount of the present day value amount of three hundred thousand dollars ($300,000) with respect to all injuries claimed to have resulted from the administration of a covered vaccine to a single individual. The value of all services to be provided by the ~~Department and the Department of Human Resources,~~ Department, as part of this award is in addition to the total amount of money compensation, and is not included in the limitation prescribed by this subsection on the amount of money compensation that may be awarded. No damages may be awarded pursuant to subdivision (a)(3) on behalf of any person to whom the covered vaccine was not administered."

Section 87. G.S. 130A-430 reads as rewritten:

"**§ 130A-430. Right of State to bring action against health care provider and manufacturer.**

(a) If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the health care provider who administered the vaccine on the ground that the health care provider was negligent in administering the vaccine. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department ~~and the Department of Human Resources~~ under G.S. 130A-427.

(b) Manufacturer. -- If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department ~~and the Department of Human Resources~~ under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys fees, fees charged by witnesses, and costs of exhibits. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license, approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection."

Section 88. G.S. 130A-434(b) reads as rewritten:

"(b) Should the Department find that the sum of appropriations and receipts is insufficient to meet financial obligations incurred in the administration of this article, appropriations and receipts in the Department ~~and in the Department of Human Resources~~ which would otherwise revert to the General Fund may be transferred to the Child Vaccine Injury Compensation Fund in order to meet such obligations. The Department may also budget anticipated receipts as needed to implement this article."

Section 89. G.S. 131D-10.3A reads as rewritten:

"**§ 131D-10.3A. Mandatory criminal checks of foster parents.**

(a) Effective January 1, 1996, the Department shall ensure that the criminal histories of all foster parents are checked and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made. The Department shall ensure that, as of the effective date of this act, all foster parents are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all foster parents who have been checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit a foster parent from providing foster care by denying or revoking the license to provide foster care if the Department determines that the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(d) The Department of Justice shall provide to the Department of ~~Human Resources~~ Health and Human Services the criminal history of the foster parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the foster parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

FOSTER PARENT
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE FOSTER CARE IN A LICENSED FAMILY FOSTER HOME.

'Criminal history' includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied licensure or your foster home license is revoked by the Department of ~~Human Resources~~ Health and Human Services as a result of the criminal history check, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to prohibit the foster parent from providing foster care. Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the foster parent's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the foster parent's criminal history to the foster parent. The Department shall also notify the foster parent of the foster parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on foster parents and shall charge the Department of ~~Human Resources~~ Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of ~~Human Resources,~~ Health and Human Services, shall bear the costs of implementing this section."

Section 90. G.S. 131E-136 reads as rewritten:

"**§ 131E-136. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Commission' means the North Carolina Medical Care Commission.

(2) 'Home care agency' means a private or public organization which provides home care services.

(3) 'Home care services' means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;

b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;

c. Medical social services;

d. In-home aide services that involve hands-on care to an individual;

e. Infusion nursing services; and

f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(4) 'Home health agency' means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E."

Section 91. The heading for Article 1 of Chapter 134A of the General Statutes reads as rewritten:

"ARTICLE 1.

"Division of Youth Services in the Department of ~~Human Resources.~~ Health and Human Services."

Section 92. The heading for Article 7 of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 7.

"Persons Admitted to Department of ~~Human Resources~~ Health and Human Services

Institutions to Pay Costs."

Section 93. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. -- The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not

permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services or the ~~Department~~ Departments of ~~Environment, Health, and Natural Resources~~ Health and Human Services and Environment and Natural Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

Section 94. G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY NUMBER OF COPIES

State Departments and Officials
Governor 1
Lieutenant Governor 1
Auditor 1
Treasurer 1
Secretary of State 1
Superintendent of Public Instruction 1
Attorney General (Library) 1
Commissioner of Agriculture 1
Commissioner of Labor 1
Commissioner of Insurance 1
Department of ~~Environment, Health,~~ Environment and Natural Resources 1
Department of ~~Human Resources~~ Health and Human Services 1
Board of Transportation 1
Utilities Commission 1
Department of Administration 1
Clerk of the Supreme Court 1
Clerk of the Court of Appeals 1
Clerk of the Superior Court ..... 1 each
Department of Cultural Resources [State Library] 5
Supreme Court Library 2
Legislative Library 1
Schools
All state-supported colleges and universities in the State of North Carolina ..... * 1 each
Local Officials
Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated municipality or county 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 95. G.S. 143-280 reads as rewritten:

"**§ 143-280. Membership.**

The Commission shall consist of ~~one member~~ three members from the ~~North Carolina~~ Department of ~~Human Resources, one member from the Department of Human Resources, one member from the Department of Human Resources,~~ Health and Human Services, one member from the boards of county commissioners, one county superintendent of social services, one local health director, and one clerk of the superior court."

Section 96. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services under the supervision of the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services pursuant to G.S. 130A-4(b) shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. The Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

Section 97. G.S. 143-436 reads as rewritten:

"**§ 143-436. North Carolina Pesticide Board; creation and organization.**

(a) There is hereby established the North Carolina Pesticide Board which, together with the Commissioner of Agriculture, shall be responsible for carrying out the provisions of this Article.

(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

(1) One member each representing the North Carolina Department of ~~Agriculture and two members representing the North Carolina Department of Environment, Health, and Natural Resources, one of whom shall be~~ Agriculture, the State Health Director or his ~~designee and one of whom shall represent~~ designee, and one member from an environmental protection ~~agency.~~ agency in the Department of Environment and Natural Resources. The persons so selected may be either members of a policy board or departmental officials or employees.

(2) A representative of the agricultural chemical industry.

(3) A person directly engaged in agricultural production.

(4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist.

(c) The members of the Pesticide Board shall serve staggered four-year terms. Of the persons originally appointed, the members representing State agencies shall serve two-year terms, and the four at-large members shall serve four-year terms. All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled by appointment by the Governor for the remainder of the unexpired term. The Governor may at any time remove any member from the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the same credentials as his predecessor.

(d) The Board shall select its ~~chairman~~ chair from its own membership, to serve for a term of two years. The ~~chairman~~ chair shall have a full vote. Any vacancy

occurring in the ~~chairmanship~~ chair's position shall be filled by the Board for the remainder of the term. The Board may select such other officers as it deems necessary.

(e) Any action of the Board shall require at least four concurring votes.

(f) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and compensation prescribed in G.S. 138-5."

Section 98. G.S. 143-573 reads as rewritten:

"**§ 143-573. Task Force -- creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Task Force within the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of ~~36~~ 35 members, ~~12~~ 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, ten of whom shall be appointed by the Speaker of the House of Representatives, and ten of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of ~~Environment, Health, and Natural Resources;~~ Health and Human Services;
(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
(10) The Secretary of the Department of Human Resources;
~~(11) The Secretary of the Department of Environment, Health, and Natural Resources;~~
(11.1) The Director of the Administrative Office of the Courts;
(12) A director of a county department of social services appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
(13) A representative from a Sudden Infant Death Syndrome counseling and education program appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of ~~Environment, Health, and Natural Resources;~~ Health and Human Services;

(14) A representative from the North Carolina Child Advocacy Institute appointed by the Governor upon recommendation of the President of the Institute;

(14.1) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;

(15) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;

(16) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;

(17) A representative from the North Carolina League of Municipalities appointed by the Speaker of the House of Representatives upon recommendation of the League;

(18) Two public members appointed by the Speaker of the House of Representatives;

(19) A county or municipal law enforcement officer appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;

(20) A district attorney appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;

(21) A representative from the North Carolina Association of County Commissioners appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22) Two public members appointed by the President Pro Tempore of the Senate; and

(23) Five members of the Senate appointed by the President Pro Tempore of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. The Speaker of the House of Representatives shall call the first meeting no later than October 1, 1991. At the first meeting the members shall elect a chair who shall preside for the duration of the Task Force."

Section 99. G.S. 143-575 reads as rewritten:

"**§ 143-575. State Team -- creation; membership; vacancies.**

(a) There is created the North Carolina Child Fatality Prevention Team within the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services for budgetary purposes only.

(b) The State Team shall be composed of eleven members of whom nine members are ex officio and two are appointed. The ex officio members other than the Chief Medical Examiner may designate a representative from their departments, divisions, or offices to represent them on the State Team.

(1) The Chief Medical Examiner, who shall chair the State Team;
(2) The Attorney General;
(3) The Director of the Division of Social Services, Department of ~~Human Resources;~~ Health and Human Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of ~~Environment, Health, and Natural Resources;~~ Health and Human Services;
(6) The Superintendent of Public Instruction;
(7) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of ~~Human Resources;~~ Health and Human Services;
(7.1) The Director of the Administrative Office of the Courts;
(8) The pediatrician appointed pursuant to G.S. 143-573(b)(16) to the Task Force;
(9) A public member, appointed by the Governor; and
(10) The Team Coordinator.

(c) All members of the State Team are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment."

Section 100. G.S. 143-576.2(b) reads as rewritten:

"(b) Each Local Team shall consist of the following persons:

(1) The director of the county department of social services, and a member of the director's staff;
(2) A local law enforcement officer, appointed by the board of county commissioners;
(3) An attorney from the district attorney's office, appointed by the district attorney;
(4) The executive director of the local community action agency, as defined by the ~~Division of Economic Opportunity,~~ Department of ~~Human Resources,~~ Health and Human Services, or the executive director's designee;
(5) The superintendent of each local school administrative unit located in the county, or the superintendent's designee;
(6) A member of the county board of social services, appointed by the chair of that board;
(7) A local mental health professional, appointed by the director of the area authority established under Chapter 122C of the General Statutes;

(8) The local guardian ad litem coordinator, or the coordinator's designee;
(9) The director of the local department of public health; and
(10) A local health care provider, appointed by the local board of health.

In addition, a Local Team that reviews the records of additional child fatalities shall include the following four additional members:

(1) An emergency medical services provider or firefighter, appointed by the board of county commissioners;
(2) A district court judge, appointed by the chief district judge in that district;
(3) A county medical examiner, appointed by the Chief Medical Examiner;
(4) A representative of a local day care facility or Head Start program, appointed by the director of the county department of social services; and
(5) A parent of a child who died before reaching the child's eighteenth birthday, to be appointed by the board of county commissioners.

The Team Coordinator shall serve as an ex officio member of each Local Team that reviews the records of additional child fatalities. The board of county commissioners may appoint a maximum of five additional members to represent county agencies or the community at large to serve on any Local Team. Vacancies on a Local Team shall be filled by the original appointing authority."

Section 101. G.S. 143B-139.1 reads as rewritten:

"**§ 143B-139.1. ~~Department of Human Resources~~ Secretary of Health and Human Services ~~-- head --~~ to ~~establish~~ adopt rules ~~and regulations~~ applicable to local health and human ~~resource~~ services agencies.**

The Secretary of the Department of ~~Human Resources~~ Health and Human Services ~~is authorized to establish~~ may adopt rules ~~and regulations~~ applicable to local health and human ~~resource~~ services agencies for the purpose of program evaluation, fiscal audits, and collection of third-party payments."

Section 102. G.S. 143B-139.2 reads as rewritten:

"**§ 143B-139.2. ~~Department of Human Resources~~ Secretary of Health and Human Services ~~-- head --~~ requests for grants-in-aid from non-State agencies.**

It is the intent of this General Assembly that non-State health and human ~~resources~~ services agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of ~~Human Resources~~ Health and Human Services for recommendations to the Governor and the Advisory Budget Commission and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of ~~Human Resources,~~ Health and Human Services, provide a postaudit of their operations that has been done by a certified public accountant."

Section 103. G.S. 143B-150.7 reads as rewritten:

"**§ 143B-150.7. Advisory Committee on Family-Centered Services; establishment, membership, compensation.**

(a) There is established the Advisory Committee on Family-Centered Services within the Department of ~~Human Resources.~~ Health and Human Services.

(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) ~~Four~~ Five members representing the Department of ~~Human Resources,~~ Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Youth Services, ~~and~~ one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse ~~Services;~~ Services, and one of whom shall represent the Division of Maternal and Child Health;

(2) ~~Three~~ Two members, one from each of the following: the Administrative Office of the ~~Courts,~~ Courts and the Department of Public ~~Instruction, and the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;~~ Instruction;

(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;

(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;

(5) One member representing the schools of social work of The University of North Carolina;

(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of ~~Human Resources~~ Health and Human Services shall serve as the ~~Chairman~~ Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the Division of Youth Services, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

(c) To the extent that funds are made available, members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(d) A majority of the Committee shall constitute a quorum for the transaction of its business.

(e) The Committee may use funds allocated to it to employ an administrative staff person to assist the Committee in carrying out its duties. Clerical and other support staff services needed by the Committee shall be provided by the Secretary of ~~Human Resources.~~ Health and Human Services."

Section 104. G.S. 143B-150.9 reads as rewritten:

"**§ 143B-150.9. State agency cooperation with Advisory Committee on Family-Centered Services.**

All appropriate State agencies, including the Department of ~~Human Resources, the Department of Environment, Health, and Natural Resources,~~ Health and Human Services, the Department of Public Instruction, the Administrative Office of the Courts, the Governor's Crime Commission, and other public family preservation service providers shall cooperate with the Advisory Committee on Family-Centered Services in carrying out its responsibilities."

Section 105. G.S. 143B-168.12(a) reads as rewritten:

"(a) In order to receive State funds, the following conditions shall be met:

(1) The North Carolina Partnership shall have a Board of Directors consisting of the following ~~39~~ 38 members:

a. The Secretary of ~~Human Resources,~~ Health and Human Services, ex officio;

b. ~~The Secretary of Environment, Health, and Natural Resources, ex officio;~~

c. The Superintendent of Public Instruction, ex officio;

d. The President of the Department of Community Colleges, ex officio;

e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;

f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;

g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor;

h. The President Pro Tempore of the Senate, or a designee;
i. The Speaker of the House of Representatives, or a designee;
j. The Majority Leader of the Senate, or a designee;
k. The Majority Leader of the House of Representatives, or a designee;
l. The Minority Leader of the Senate, or a designee; and
m. The Minority Leader of the House of Representatives, or a designee.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.

(5) The North Carolina Partnership shall develop and implement a centralized accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. The following local partnerships shall be required to participate in the centralized accountability system developed by the North Carolina Partnership pursuant to this subdivision:

a. Local partnerships which have significant deficiencies in their accounting systems, internal controls, and contract management systems, as determined by the North Carolina Partnership based on the annual financial audits of the local partnerships conducted by the Office of the State Auditor; and

b. Local partnerships which are in the first two years of operation following their selection. At the end of this two-year period, local partnerships shall continue to participate

in the centralized accounting and contract management system. With the approval of the North Carolina Partnership, local partnerships may perform accounting and contract management functions at the local level using the standardized and uniform accounting system, internal controls, and contract management systems developed by the North Carolina Partnership.

Local partnerships which otherwise would not be required to participate in the centralized accounting and contract management system pursuant to this subdivision may voluntarily choose to participate in the system. Participation or nonparticipation shall be for a minimum of two years, unless, in the event of nonparticipation, the North Carolina Partnership determines that any partnership's annual financial audit reveals serious deficiencies in accounting or contract management.

(6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.

(7) The North Carolina Partnership may adjust its allocations on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated 'superior', 'satisfactory', or 'needs improvement'. Local partnerships rated 'superior' shall receive, to the extent that funds are available, a ten percent (10%) increase in their annual funding allocation. Local partnerships rated 'satisfactory' shall receive their annual funding allocation. Local partnerships rated 'needs improvement' shall receive ninety percent (90%) of their annual funding allocation.

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

(8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall serve two-year terms and may not serve more than two consecutive terms. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

(9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide."

Section 106. G.S. 143B-179.5 reads as rewritten:

"**§ 143B-179.5. Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families; establishment, composition, organization; duties, compensation, reporting.**

(a) There is established an Interagency Coordinating Council for Children from Birth to Five with Disabilities and Their Families in the Department of ~~Human Resources.~~ Health and Human Services.

(b) The Interagency Coordinating Council shall have 26 members, appointed by the Governor. Effective July 1, 1994, the Governor shall designate 13 appointees to serve for two years and 13 appointees to serve for one year. Thereafter, the terms of all Council members shall be two years. The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members may be appointed to succeed themselves for one term and may be appointed again, after being off the Council for one term.

The composition of the Council and the designation of the Council's chair shall be as specified in the 'Individuals with Disabilities Education Act' (IDEA), P.L. 102-119, the federal early intervention legislation, except that two members shall be members of the Senate, appointed from recommendations of the President Pro Tempore of the Senate and two members shall be members of the House of Representatives, appointed from recommendations of the Speaker of the House of Representatives.

(c) The chair may establish those standing and ad hoc committees and task forces as may be necessary to carry out the functions of the Council and appoint Council members or other individuals to serve on these committees and task forces. The Council shall meet at least quarterly. A majority of the Council shall constitute a quorum for the transaction of business.

(d) The Council shall advise the ~~Departments of Human Resources, and Environment, Health, and Natural Resources,~~ Department of Health and Human Services and other appropriate agencies in carrying out their early intervention services, and the Department of Public Instruction, and other appropriate agencies, in their activities related to the provision of special education services for preschoolers. The Council shall specifically address in its studies and evaluations that it considers necessary to its advising:

(1) The identification of sources of fiscal and other support for the early intervention system;

(2) The development of policies related to the early intervention services;

(3) The preparation of applications for available federal funds;

(4) The resolution of interagency disputes; and

(5) The promotion of interagency agreements.

(e) Members of the Council and parents on ad hoc committees and task forces of the Council shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Council shall prepare and submit an annual report to the Governor and to the General Assembly on the status of the early intervention system for eligible infants and toddlers and on the status of special education services for preschoolers.

All clerical and other services required by the Council shall be supplied by the Secretary of ~~Human Resources~~ Health and Human Services and the Superintendent of Public Instruction, as specified by the interagency agreement authorized by G.S. 122C-112(a)(13)."

Section 107. G.S. 143B-179.6 reads as rewritten:

"**§ 143B-179.6. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; agency cooperation.**

All appropriate agencies, including the Department of ~~Human Resources, the Department of Environment, Health, and Natural Resources,~~ Health and Human Services and the Department of Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate."

Section 108. G.S. 143B-181 reads as rewritten:

"**§ 143B-181. Governor's Advisory Council on Aging -- members; selection; quorum; compensation.**

The Governor's Advisory Council on Aging of the Department of ~~Human Resources~~ Health and Human Services shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one

representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of ~~Environment, Health,~~ Environment and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as ~~chairman~~ chair to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of ~~Human Resources.~~ Health and Human Services."

Section 108.1. G.S. 143B-279.7 reads as rewritten:

"**§ 143B-279.7. Fish kill response protocols; report.**

(a) The Department of ~~Environment, Health,~~ Environment and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of Environmental

Management, Division of Marine Fisheries, ~~Division of Epidemiology,~~ Department of Health and Human Services, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department of Environment and Natural Resources shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:

(1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.

(2) Responding to fish kills within 24 hours.

(3) Investigating and collecting data relating to fish kill events.

(4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties.

(b) The Secretary of the Department of Environment and Natural Resources shall take all necessary and appropriate steps to effectively carry out the purposes of this act including:

(1) Providing adequate training for fish kill investigators.

(2) Taking immediate action to protect public health and the environment.

(3) Cooperating with agencies, scientists, and other interested parties, to help determine the cause of the fish kill.

(c) The Department of Environment and Natural Resources shall report annually to the Environmental Review Commission and the Senate Agriculture and Environment Committee no later than December 1 of each year. This report shall include a summary of all fish kill activity within the last year, an overview of any trend analyses, a discussion of any new or modified methodologies or reporting protocols, and any other relevant information."

Section 109. G.S. 143B-426.22(a) reads as rewritten:

"**§ 143B-426.22. Governor's Management Council.**

(a) Creation; Membership. -- The Governor's Management Council is created in the Department of Administration. The Council shall contain the following members: The Secretary of Administration, who shall serve as chairman, a senior staff officer responsible for productivity and management programs from the Departments of Commerce, Revenue, ~~Environment, Health,~~ Environment and Natural Resources, Transportation, Crime Control and Public Safety, Cultural Resources, Correction, ~~Human Resources,~~ Health and Human Services, and Administration; and an equivalent officer from the Offices of State Personnel, State Budget and Management, and the Governor's Program for Executive and Organizational Development. The following persons may also serve on the Council if the entity represented chooses to participate: a senior staff officer responsible for productivity and management programs from any State department not previously specified in this section, and a representative from The University of North Carolina."

Section 110. G.S. 150B-1(e) reads as rewritten:

"(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly

exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of ~~Human Resources~~ Health and Human Services and the Department of ~~Environment, Health,~~ Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of ~~Human Resources~~ Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Section 111. G.S. 148-10 reads as rewritten:

"**§ 148-10. Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services to supervise sanitary and health conditions of prisoners.**

The Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners."

Section 112. G.S. 153A-225(b) reads as rewritten:

"(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of ~~Environment, Health, and Natural Resources.~~ Health and Human Services. The report shall be made on forms developed and distributed by the Department of ~~Environment, Health, and Natural Resources.~~ Health and Human Services."

Section 113. G.S. 153A-226(b) reads as rewritten:

"(b) The Commission for Health Services shall prepare a score sheet to be used by local health departments in inspecting local confinement facilities. The local health departments shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local health department. The health department shall promptly inspect the facility. After making its inspection, the local health department shall forward a copy of its report to the Department of ~~Human Resources~~ Health and Human Services and to the unit operating the facility, on forms prepared by the Department of ~~Environment, Health, and Natural Resources.~~ Health and Human Services. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223."

Section 114. G.S. 159I-28 reads as rewritten:

"**§ 159I-28. Rules.**

(a) The Office of State Budget and Management and the Commission for Health Services ~~of the Department of Environment, Health, and Natural Resources~~ may adopt, modify and repeal rules establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon the concurrence of both agencies involved.

(b) A copy of the rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the Division and the Office of State Budget and Management to any unit of local government."

Section 115. G.S. 161-11.1 reads as rewritten:

"**§ 161-11.1. Fees for Children's Trust Fund.**

(a) Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund."

Section 116. G.S. 162A-30 reads as rewritten:

"**§ 162A-30. Construction of Article.**

This Article shall be construed as providing supplemental authority in addition to the powers of the North Carolina Utilities Commission under Chapter 62 of the North Carolina General Statutes, the North Carolina Environmental Management Commission under Articles 21 and 38 of Chapter 143 of the North Carolina General Statutes, and the North Carolina Department of ~~Human Resources~~ Environment and Natural Resources under General Statutes ~~Chapter 130,~~ Chapter 130A, and any other provisions of law concerning local and regional sewage disposal."

Section 117. G.S. 163-82.14(b) reads as rewritten:

"(b) Death. -- The Department of ~~Environment, Health, and Natural Resources,~~ Health and Human Services, on or before the fifteenth day of March, June, September, and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county. The Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding quarter. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed."

Section 118. The phrase "Human Resources" is deleted and replaced by the phrase "Health and Human Services" wherever it occurs in each of the following sections of the General Statutes:

G.S. 7A-29	Appeals of right from certain administrative agencies.
G.S. 7A-289.2	Definitions.
G.S. 7A-289.13	Legislative intent.
G.S. 7A-289.14	Duties of Secretary of Human Resources.
G.S. 7A-289.15	Purchase of care or services from programs meeting State standards.
G.S. 7A-289.16	County assessment of youth needs.
G.S. 7A-289.32	Grounds for terminating parental rights.
G.S. 7A-450.4	Exemptions.
G.S. 7A-517	Definitions.
G.S. 7A-548	Duty of Director to report evidence of abuse, neglect; investigation by local law enforcement; notification of

	Department of Human Resources and State Bureau of Investigation.
G.S. 7A-552	Central registry.
G.S. 7A-571	Taking a juvenile into temporary custody.
G.S. 7A-576	Place of secure or nonsecure custody.
G.S. 7A-652	Commitment of delinquent juvenile to Division of Youth Services.
G.S. 7A-653	Transfer authority of Governor.
G.S. 7A-676	Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.
G.S. 8B-1	Definitions; right to interpreter; determination of competence.
G.S. 8B-6	List of interpreters; coordination of interpreter services.
G.S. 8B-8	Compensation.
G.S. 8B-10	North Carolina Interpreter Classification System application and assessment fee.
G.S. 14-45.1	When abortion not unlawful.
G.S. 14-309.7	Licensing procedure.
G.S. 14-309.11	Accounting and use of proceeds.
G.S. 14-313	Youth access to tobacco products.
G.S. 14-316.1	Contributing to delinquency and neglect by parents and others.
G.S. 15-155.1	Reports to district attorneys of aid to dependent children and illegitimate births.
G.S. 15-155.2	District attorney to take action on report of aid to dependent child or illegitimate birth.
G.S. 15-206	Cooperation with Department of Correction and officials of local units.
G.S. 15A-533	Right to pretrial release in capital and noncapital cases.
G.S. 15A-534.2	Detention of impaired drivers.
G.S. 17C-3	North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.
G.S. 18B-805	Distribution of revenue.
G.S. 19-8.2	Right of entry.
G.S. 20-17.6	Restoration of a license after a conviction of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.
G.S. 20-79.5	Special registration plates for elected and appointed State government officials.
G.S. 20-79.7	Fees for special registration plates and distribution of the fees.

G.S. 20-84	Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.
G.S. 35A-1116	Costs and Fees.
G.S. 48-1-101	Definitions.
G.S. 50-13.4	(For applicability see note) Action for support of minor child.
G.S. 50-13.9	Procedure to insure payment of child support.
G.S. 52C-3-309	Duties of State information agency.
G.S. 58-3-185	Lien created for payment of past-due child support obligations.
G.S. 58-50-50	Preferred provider; definition.
G.S. 58-51-120	Coverage of children.
G.S. 58-64-85	Other licensing or regulation.
G.S. 58-67-10	Establishment of health maintenance organizations.
G.S. 58-3-185	Lien created for payment of past-due child support obligations.
G.S. 58-68-15	Commission composition; appointment; terms; reimbursement; and liability.
G.S. 62-157	Dual Party relay system.
G.S. 66-87	Injunctions.
G.S. 66-88	Application of Article after enactment of federal legislation.
G.S. 70-29	Discovery of remains and notification of authorities.
G.S. 72-34	Verification of application; disqualifications for license.
G.S. 88-28.1	Restraining orders against persons engaging in illegal practices.
G.S. 90-14	Revocation, suspension annulment or denial of license.
G.S. 90-21.25	Definitions.
G.S. 90-88	Authority to control.
G.S. 90-96	Conditional discharge and expunction of records for first offense.
G.S. 90-96.01	Drug education schools; responsibilities of the Department of Human Resources; fees.
G.S. 90-99	Republishing of schedules.
G.S. 90-101	Annual registration and fee to engage in listed activities with controlled substances; effect of registration; exceptions; waiver; inspection.
G.S. 90-102	Additional provisions as to registration.
G.S. 90-107	Prescriptions, stocks, etc., open to inspection by officials.
G.S. 90-109	Licensing required.
G.S. 90-109.1	Treatment.
G.S. 90-111	Cooperative arrangements.
G.S. 90-113.3	Education and research.

G.S. 90-113.14	Conditional discharge and expunction of records for first offenses.
G.S. 90-113.32	Board.
G.S. 90-271	Operation lawful upon request of married person or person over 18.
G.S. 90-294	License required; Article not applicable to certain activities.
G.S. 90-405	Definitions.
G.S. 90-408	Exceptions for underserved areas.
G.S. 90-501	Board of Employee Assistance Professionals; members.
G.S. 93B-12	Information from licensing boards having authority over health care providers.
G.S. 93B-13	Revocation when licensing privilege forfeited for nonpayment of child support.
G.S. 96-8	Definitions.
G.S. 96-17	Protection of rights and benefits; deductions for child support obligations.
G.S. 105-60	(Repealed effective July 1, 1997) Day-care facilities.
G.S. 105-164.13	Retail sales and use tax.
G.S. 105-187.6	Exemptions from highway use tax.
G.S. 105-449.106	Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs.
G.S. 105A-2	Definitions.
G.S. 106-141	Examinations and investigations.
G.S. 106-266.17	Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.
G.S. 106-583	Policy of State; cooperation of departments and agencies with Agricultural Extension Service.
G.S. 108A-1	Creation.
G.S. 108A-2	Size.
G.S. 108A-3	Method of appointment; residential qualifications; fee or compensation for services; consolidated human services board appointments.
G.S. 108A-9	Duties and responsibilities.
G.S. 108A-10	Fees.
G.S. 108A-14	Duties and responsibilities.
G.S. 108A-15.1	Consolidated human services board; human services director.
G.S. 108A-18	Duties and responsibilities.
G.S. 108A-24	Definitions.
G.S. 108A-25	Creation of programs.
G.S. 108A-26	Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108A and 111.

G.S. 108A-39.1	AFDC Emergency Assistance Program.
G.S. 108A-51	Authorization for Food Stamp Program.
G.S. 108A-59	Acceptance of medical assistance constitutes assignment to the State of right to third party benefits; recovery procedure.
G.S. 108A-62	Therapeutic leave for medical assistance patients.
G.S. 108A-65	Conflict of interest.
G.S. 108A-68	Drug Use Review Program; rules.
G.S. 108A-69	Employer obligations.
G.S. 108A-70	Recoupment of amounts spent on medical care.
G.S. 108A-70.5	Medicaid Estate Recovery Plan.
G.S. 108A-79	Appeals.
G.S. 108A-80	Confidentiality of records.
G.S. 108A-103	Duty of director upon receiving report.
G.S. 108B-23	Designation of administering agency powers and responsibilities.
G.S. 110-50	Consent required for bringing child into State for placement or adoption.
G.S. 110-51	Bond required.
G.S. 110-52	Consent required for removing child from State.
G.S. 110-55	Violation of Article a misdemeanor.
G.S. 110-56	Definitions.
G.S. 110-57.1	Adoption of Compact.
G.S. 110-57.3	Agreements under Compact.
G.S. 110-86	Definitions.
G.S. 110-90	Powers and duties of Secretary of Human Resources.
G.S. 110-90.2	Mandatory day care providers' criminal history checks.
G.S. 110-93	Licensing procedure.
G.S. 110-100	Licenses are property of the State.
G.S. 110-102	Information for parents.
G.S. 110-129	Definitions.
G.S. 110-130.1	Non-AFDC services.
G.S. 110-136	Garnishment for enforcement of child-support obligation.
G.S. 110-136.2	Use of unemployment compensation benefits for child support.
G.S. 110-136.3	Income withholding procedures; applicability.
G.S. 110-136.9	Payment of withheld funds.
G.S. 110-139	Location of absent parents.
G.S. 110-139.1	Access to federal parent locator service; parental kidnapping and child custody cases.
G.S. 110-141	Effectuation of intent of Article.
G.S. 110-142	Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to

	outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.
G.S. 110-142.1	IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.
G.S. 110-142.2	Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.
G.S. 111-4	Register of State's blind.
G.S. 111-5	Information and aid bureaus.
G.S. 111-6	Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.
G.S. 111-6.1	Rehabilitation center for the adult blind.
G.S. 111-7	Promotion visits.
G.S. 111-8	Investigations; eye examination and treatment.
G.S. 111-8.1	Certain eye examinations to be reported to Department of Human Resources.
G.S. 111-12.1	Acceptance of private contributions for particular facilities authorized.
G.S. 111-12.2	Contributions treated as State funds to match federal funds.
G.S. 111-12.3	Rules and regulations as to receiving and expending contributions.
G.S. 111-12.5	Reserve and operating capital fund.
G.S. 111-12.6	Disposition of funds deposited with or transferred to State Treasurer.
G.S. 111-13	Administration of assistance; objective standards for personnel rules and regulations.
G.S. 111-14	Application for benefits under Article; investigation and award by county commissioners.
G.S. 111-16	Application for aid; notice of award; review.
G.S. 111-17	Amount and payment of assistance; source of funds.
G.S. 111-18	Payment of awards.
G.S. 111-20	Awards subject to reopening upon change in condition.
G.S. 111-24	Cooperation with federal departments or agencies; grants from federal government.
G.S. 111-25	Acceptance and use of federal aid.
G.S. 111-27	Department of Human Resources to promote employment of needy blind persons; vending stands on public property.
G.S. 111-27.1	Department of Human Resources authorized to conduct certain business operations.

G.S. 111-27.2	Blind vending-stand operators; retirement benefits.
G.S. 111-28	Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.
G.S. 111-28.1	Department of Human Resources authorized to cooperate with federal government in rehabilitation of blind.
G.S. 111-29	Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports.
G.S. 111-30	Personal representatives for certain recipients of aid to the blind.
G.S. 111-31	Courts for purposes of §§ 111-30 to 111-33; records.
G.S. 111-41	Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources.
G.S. 111-44	Location and services provided by State agency.
G.S. 111-46	Vending facilities operated by those other than visually handicapped persons.
G.S. 111-47	Exclusions.
G.S. 111-48	Preference to blind persons in operation of highway vending facilities.
G.S. 111-50	Operations of highway vending.
G.S. 113-271	Hook-and-line licenses in inland fishing waters.
G.S. 114-19.2	Criminal record checks of school personnel.
G.S. 114-19.4	Criminal record checks of foster parents.
G.S. 114-19.5	Criminal record checks of child day care providers.
G.S. 115C-110	Services mandatory; single-agency responsibility; State and local plans; census and registration.
G.S. 115C-111	Free appropriate education for all children with special needs.
G.S. 115C-113	Diagnosis and evaluation; individualized education program.
G.S. 115C-113.1	Surrogate parents.
G.S. 115C-115	Placements in private schools, out-of-state schools and schools in other local educational agencies.
G.S. 115C-117	Creation.
G.S. 115C-121	Establishment; organization; powers and duties.
G.S. 115C-122	Early childhood development program; evaluation and placement of children.
G.S. 115C-123	Establishment; operations.
G.S. 115C-124	Pupils admitted; education.
G.S. 115C-126.1	Fees for athletic programs; appeal.
G.S. 115C-127	Incorporation, name and management.
G.S. 115C-128	Admission of pupils; how admission obtained.
G.S. 115C-130	Admission of pupils from other states.

G.S. 115C-131	Department of Human Resources may confer diplomas.
G.S. 115C-132	State Treasurer is ex officio treasurer of institution.
G.S. 115C-139	Interlocal cooperation.
G.S. 115C-144	Departmental requests.
G.S. 115C-250	Authority to expend funds for transportation of children with special needs.
G.S. 115C-325	System of employment for public school teachers.
G.S. 115D-1	Statement of purpose.
G.S. 115D-5	Administration of institution by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.
G.S. 116-37.1	Center for public television.
G.S. 116-209.30	Social Workers' Education Loan Fund.
G.S. 120-65	Assistance of Department of Human Resources, State Board of Education, and Department of Public Instruction.
G.S. 120-70.72	Membership; cochairmen; vacancies.
G.S. 120-182	(For applicability see note) Commission; membership.
G.S. 122A-5.13	Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.
G.S. 122C-3	Definitions.
G.S. 122C-113	Cooperation between Secretary and other agencies.
G.S. 122C-117	Powers and duties of the area authority.
G.S. 122C-124	Area Authority funding suspended.
G.S. 122C-125	Area Authority financial failure; State assumption of financial control.
G.S. 122C-197	Mediation.
G.S. 122C-199	Administrative review by Review Officer.
G.S. 122C-403	Secretary's authority over Camp Butner reservation.
G.S. 122C-412.1	Butner Advisory Council; powers.
G.S. 122C-412.2	Butner Advisory Council; planning responsibility.
G.S. 122C-421	Joint security force.
G.S. 126-5	Employees subject to Chapter; exemptions.
G.S. 130A-248	Regulation of food and lodging establishments.
G.S. 131A-19	Annual report.
G.S. 131D-1	Licensing of maternity homes.
G.S. 131D-2	Licensing of adult care homes for the aged and disabled.
G.S. 131D-4.2	Adult care homes; family care homes; annual cost reports; exemptions; enforcement.
G.S. 131D-4.3	Adult care home rules.
G.S. 131D-6	Certification of adult day care programs; purpose; definition; penalty.

G.S. 131D-10.2	Definitions.
G.S. 131D-10.3A	Mandatory criminal checks of foster parents.
G.S. 131D-10.6A	Training by the Division of Social Services required.
G.S. 131D-11	Inspection.
G.S. 131D-12	Approval of new facilities.
G.S. 131D-13	Failure to provide information.
G.S. 131D-21	Declaration of residents' rights.
G.S. 131D-24	Notice to resident.
G.S. 131D-26	Enforcement and investigation.
G.S. 131D-27	Confidentiality.
G.S. 131D-28	Civil action.
G.S. 131D-29	Revocation of license.
G.S. 131D-31	Adult care home community advisory committees.
G.S. 131D-32	Functions of adult care home community advisory committees.
G.S. 131D-34	Penalties; remedies.
G.S. 131E-1	Definitions.
G.S. 131E-13	Lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities.
G.S. 131E-76	Definitions.
G.S. 131E-117	Declaration of patient's rights.
G.S. 131E-125	Revocation of a license.
G.S. 131E-128	Nursing home advisory committees.
G.S. 131E-138	Licensure requirements.
G.S. 131E-154.2	Definitions.
G.S. 131E-159	Requirements for certification.
G.S. 131E-175	Findings of fact.
G.S. 131E-176	Definitions.
G.S. 131E-177	Department of Human Resources is designated State Health Planning and Development Agency; powers and duties.
G.S. 131E-188	Administrative and judicial review.
G.S. 131E-190	Enforcement and sanctions.
G.S. 131E-192.2	Definitions.
G.S. 131E-201	Definitions.
G.S. 131E-214.1	Definitions.
G.S. 131E-214.4	Statewide data processor.
G.S. 131F-2	Definitions.
G.S. 134A-1	Legislative intent and purpose.
G.S. 134A-2	Definitions.
G.S. 134A-6	Transfer of institutions.
G.S. 134A-8	Powers and duties of Secretary of Human Resources.
G.S. 135-16.1	Blind or visually handicapped employees.
G.S. 135-40.2	Eligibility.

G.S. 135-40.6	Benefits subject to deductible and coinsurance (comprehensive benefits).
G.S. 136-18	Powers of Department of Transportation.
G.S. 136-41.1	Appropriation to municipalities; allocation of funds generally; allocation to Butner.
G.S. 136-89.56	Commercial enterprises.
G.S. 137-31.3	Members of board of directors; terms of office; per diem and expenses.
G.S. 143-23.2	Transfers to Department of Human Resources.
G.S. 143-31.1	Study and review of plans and specifications for building, improvement, etc., projects.
G.S. 143-31.3	Grants to nonstate health and welfare agencies.
G.S. 143-48.1	Medicaid program exemption.
G.S. 143-49	Powers and duties of Secretary.
G.S. 143-116.6	Rules concerning conduct; violation.
G.S. 143-116.7	Motor vehicle laws applicable to streets, alleys and driveways on the grounds of Department of Human Resources institutions; traffic regulations; registration and regulation of motor vehicles.
G.S. 143-117	Institutions included.
G.S. 143-117.1	Definitions.
G.S. 143-118	Secretary of Human Resources to fix cost and charges.
G.S. 143-126.1	Lien on property for unpaid balance due institution.
G.S. 143-127.1	Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.
G.S. 143-127.2	Repair or replacement of personal property.
G.S. 143-138	North Carolina State Building Code.
G.S. 143-166.2	Definitions.
G.S. 143-166.13	Persons entitled to benefits under Article.
G.S. 143-507	Establishment of emergency medical services program.
G.S. 143-508	Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission.
G.S. 143-509	Powers and duties of Secretary.
G.S. 143-510	(For applicability see note) Emergency Medical Advisory Council.
G.S. 143-511	Powers and duties of the Council.
G.S. 143-512	Regional demonstration plans.
G.S. 143-513	Regional emergency medical services councils.
G.S. 143-514	Training programs; utilization of emergency services personnel.
G.S. 143-516	Single State agency.
G.S. 143-545A	Purpose, establishment and administration of program; services.

G.S. 143-546A	Duties of Secretary; cooperation with federal rehabilitation services administration or successor.
G.S. 143-548	Vocational Rehabilitation Advisory Council.
G.S. 143-576.6	Community Child Protection Teams; responsibility for training of team members.
G.S. 143B-2	Interim applicability of the Executive Organization Act of 1973.
G.S. 143B-6	Principal departments.
G.S. 143B-139.3	Department of Human Resources -- authority to contract with other entities.
G.S. 143B-139.4	Department of Human Resources; authority to assist private nonprofit foundations.
G.S. 143B-139.5	Department of Human Resources; adult care State/county share of costs.
G.S. 143B-139.6	Confidentiality of records.
G.S. 143B-139.7	Consolidated county human services funding.
G.S. 143B-147	Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services -- creation, powers and duties.
G.S. 143B-148	Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services -- members; selection; quorum; compensation.
G.S. 143B-150.5	Family Preservation Services Program established; purpose.
G.S. 143B-150.6	Program services; eligibility; grants for local projects; fund transfers.
G.S. 143B-152.1	Establishment of program; purpose; goals.
G.S. 143B-152.5	Grants review and selection.
G.S. 143B-152.6	Cooperation of State and local agencies.
G.S. 143B-152.7	Program evaluation; reporting requirements.
G.S. 143B-152.10	Family Resource Center Grant Program; creation; purpose; intent.
G.S. 143B-152.11	Administration of program.
G.S. 143B-152.13	Grants review and selection.
G.S. 143B-152.14	Cooperation of State and local agencies.
G.S. 143B-152.15	Program evaluation; reporting requirements.
G.S. 143B-153	Social Services Commission -- creation, powers and duties.
G.S. 143B-154	Social Services Commission -- members; selection; quorum; compensation.
G.S. 143B-157	Commission for the Blind -- creation, powers and duties.
G.S. 143B-158	Commission for the Blind -- members; selection; quorum; compensation.
G.S. 143B-161	Professional Advisory Committee -- creation, powers and duties.

G.S. 143B-162	Professional Advisory Committee -- members; selection; quorum; compensation.
G.S. 143B-163	Consumer and Advocacy Advisory Committee for the Blind -- creation, powers and duties.
G.S. 143B-164	(For applicability, see note) Consumer and Advocacy Advisory Committee for the Blind -- members; selection; quorum; compensation.
G.S. 143B-165	North Carolina Medical Care Commission -- creation, powers and duties.
G.S. 143B-166	North Carolina Medical Care Commission -- members; selection; quorum; compensation.
G.S. 143B-168.3	Child Day-Care Commission -- powers and duties.
G.S. 143B-168.4	Child Day-Care Commission -- members; selection; quorum.
G.S. 143B-168.5	Child Day Care -- special unit.
G.S. 143B-168.11	Early childhood initiatives: purpose; definitions.
G.S. 143B-176.1	Board of Directors of the Governor Morehead School -- creation, powers and duties.
G.S. 143B-176.2	Board of Directors of the Governor Morehead School -- members; selection; quorum; compensation.
G.S. 143B-177	Council on Developmental Disabilities -- creation, powers and duties.
G.S. 143B-179	Council on Developmental Disabilities -- members; selection; quorum; compensation.
G.S. 143B-180	Governor's Advisory Council on Aging -- creation, powers and duties.
G.S. 143B-181.1	Division of Aging -- creation, powers and duties.
G.S. 143B-181.1A	Plan for serving older adults; inventory of existing data; cooperation by State agencies.
G.S. 143B-181.1B	Division as clearinghouse for information; agencies to provide information.
G.S. 143B-181.2	Assistant Secretary for Aging -- appointment and duties.
G.S. 143B-181.4	Responsibility for policy.
G.S. 143B-181.6	Purpose and intent.
G.S. 143B-181.10	Respite care program established; eligibility; services; administration; payment rates.
G.S. 143B-181.15	Long-Term Care Ombudsman Program/Office; policy.
G.S. 143B-181.17	Office of State Long-Term Care Ombudsman Program/Office; establishment.
G.S. 143B-181.18	Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.
G.S. 143B-181.55	Creation, membership, meetings, organization, and adoption of measures.
G.S. 143B-216.30	Definitions.

G.S. 143B-216.31	Council for the Deaf and the Hard of Hearing -- creation and duties.
G.S. 143B-216.32	Council for the Deaf and the Hard of Hearing -- membership; quorum; compensation.
G.S. 143B-216.33	Division of Services for the Deaf and Hard of Hearing -- creation, powers and duties.
G.S. 143B-269	Black Mountain Advancement Center for Women -- established; inmates; medical and food services; training; work release.
G.S. 143B-407	North Carolina State Commission of Indian Affairs -- membership; term of office; chairman; compensation.
G.S. 143B-411.1	North Carolina Advisory Council on the Eastern Band of the Cherokee -- creation; membership; terms of office.
G.S. 143B-415	(For applicability see note) Governor's Advocacy Council on Children and Youth -- members; selection; quorum; compensation.
G.S. 143B-417	North Carolina Internship Council -- creation; powers and duties.
G.S. 143B-426.25	North Carolina Farmworker Council -- creation; membership; meetings.
G.S. 143B-478	Governor's Crime Commission -- creation; composition; terms; meetings, etc.
G.S. 147-45	Distribution of copies of State publications.
G.S. 148-19	Health services.
G.S. 150B-3	Special provisions on licensing.
G.S. 153A-217	Definitions.
G.S. 153A-221	Minimum standards.
G.S. 153A-221.1	Standards and inspections.
G.S. 153A-222	Inspections of local confinement facilities.
G.S. 153A-226	Sanitation and food.
G.S. 153A-230.4	Standards.
G.S. 153A-230.5	Satellite jails/work release units built with non-State funds.
G.S. 153A-250	Ambulance services.
G.S. 153A-256	County home.
G.S. 162-56	Place of confinement.
G.S. 162A-21	Preamble.
G.S. 163-152.1	Assistance to blind voters in primaries and elections.
G.S. 168-2	Right of access to and use of public places.
G.S. 168-4.2	May be accompanied by assistance dog.
G.S. 168-4.3	Training and registration of assistance dog.
G.S. 168-14	Vocational rehabilitation services for deaf persons.

Section 119. The phrase "Environment, Health, and Natural Resources" is deleted and replaced by the phrase "Environment and Natural Resources" wherever it occurs in each of the following sections of the General Statutes:

G.S. 7A-29	Appeals of right from certain administrative agencies.
G.S. 14-131	Trespass on land under option by the federal government.
G.S. 14-137	Willfully or negligently setting fire to woods and fields
G.S. 15A-1343	Conditions of probation.
G.S. 20-79.5	Special registration plates for elected and appointed State government officials.
G.S. 20-128	Prevention of noise, smoke, etc.; muffler cut-outs regulated.
G.S. 20-183.7	Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.
G.S. 47-30	Plats and subdivisions; mapping requirements.
G.S. 58-78.1	(Applicable January 1, 1997) State Fire and Rescue Commission created; membership.
G.S. 62-102	Application for certificate.
G.S. 68-43	Authority of Secretary of Environment, Health, and Natural Resources to remove or confine ponies on Ocracoke Island and Shackelford Banks.
G.S. 69-25.5	Methods of providing fire protection.
G.S. 74-38	Commission to file copies of bylaws with Department of Environment, Health, and Natural Resources.
G.S. 74-49	Definitions.
G.S. 74-53	Reclamation plan.
G.S. 74-76	Definitions.
G.S. 75A-17	Enforcement of Chapter.
G.S. 75A-5.1	Commercial fishing boats; renewal of number.
G.S. 76-40	Navigable waters; certain practices regulated.
G.S. 77-13	Obstructing streams a misdemeanor.
G.S. 77-14	Obstructions in streams and drainage ditches.
G.S. 87-85	Definitions.
G.S. 87-91	Notice.
G.S. 87-94	Civil penalties.
G.S. 87-95	Injunctive relief.
G.S. 90A-37	Classification of water pollution control systems.
G.S. 90A-38	Grades of certificates.
G.S. 90A-39	Operator qualifications and examination.
G.S. 90A-43	Promotion of training and other powers.
G.S. 90A-47.3	Qualifications for certification; training; examination.
G.S. 100-2	Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.
G.S. 102-8	Administrative agency.
G.S. 102-9	Duties and powers of the agency.
G.S. 100-11	Duties.
G.S. 100-12	Roads, trails, and fences authorized; protection of property.

G.S. 100-13	Fees for use of improvements; fees for other privileges; leases; rules.
G.S. 100-14	Use of fees and other collections.
G.S. 102-1.1	Name and description in relation to 1983 North American Datum.
G.S. 102-10	Prior work.
G.S. 102-15	Improvement of land records.
G.S. 102-17	County projects eligible for assistance.
G.S. 104E-10.1	Additional requirements for low-level radioactive waste facilities.
G.S. 104E-5	Definitions.
G.S. 104E-7	Radiation Protection Commission-Creation and powers.
G.S. 104E-9	Powers and functions of Department of Environment, Health, and Natural Resources.
G.S. 104E-15	Transportation of radioactive materials.
G.S. 104E-17	Payments to State and local agencies.
G.S. 104E-24	Administrative penalties.
G.S. 104F-4	(Applicable January 1, 1997) Advisory Committee.
G.S. 104G-11	Technology, license application, and environmental impact statement.
G.S. 104G-13	Closure and decommissioning.
G.S. 104G-22	Inter-Agency Committee.
G.S. 105-122	Franchise or privilege tax on domestic and foreign corporations.
G.S. 105-130.10	Amortization of air-cleaning devices, waste treatment facilities and recycling facilities.
G.S. 105-130.34	Credit for certain real property donations.
G.S. 105-151.12	Credit for certain real property donations.
G.S. 105-275	Property classified and excluded from the tax base.
G.S. 105-277.7	Use-Value Advisory Board.
G.S. 105A-2	Definitions.
G.S. 106-202.14	Creation of Board; membership; terms; chairman; quorum; board actions; compensation.
G.S. 106-202.17	Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation.
G.S. 106-760	Advisory Board.
G.S. 106-762	Fish disease management.
G.S. 106-802	Definitions.
G.S. 106-805	Written notice of swine farms.
G.S. 110-142.2	Suspension, revocation, restriction of license to operate a motor vehicle, or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.
G.S. 113-1	Meaning of terms.

G.S. 113-28.1	Designated employees commissioned special peace officers by Governor.
G.S. 113-28.2	Powers of arrest.
G.S. 113-28.4	Oaths required.
G.S. 113-29	Policy and plan to be inaugurated by Department of Environment, Health, and Natural Resources.
G.S. 113-35	State timber may be sold by Department of Environment, Health, and Natural Resources; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.
G.S. 113-44.9	Definitions.
G.S. 113-51	Powers of Department of Environment, Health, and Natural Resources.
G.S. 113-60.4	Purpose and intent.
G.S. 113-60.14	Compact Administrator; North Carolina members of advisory committee.
G.S. 113-60.15	Agreements with nonconductor states.
G.S. 113-60.22	Definitions.
G.S. 113-60.32	Definitions.
G.S. 113-60.33	Standby duty.
G.S. 113-61	Private limited dividend corporations may be formed.
G.S. 113-64	Duties of supervision by Secretary of Environment, Health, and Natural Resources.
G.S. 113-77.6	Definitions.
G.S. 113-81.1	Authority to render scientific forestry services.
G.S. 113-128	Definitions relating to agencies and their powers.
G.S. 113-145.5	Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.
G.S. 113-145.8	Clean Water Management Trust Fund: Advisory Council.
G.S. 113-378	Persons drilling for oil or gas to register and furnish bond.
G.S. 113-389	Definitions.
G.S. 113A-33	Definitions.
G.S. 113A-52	Definitions.
G.S. 113A-74	Appalachian Trails System; connecting or side trails; coordination with the National Trails System Act.
G.S. 113A-75	Assistance under this Article with the National Trails System Act (PL 90-543).
G.S. 113A-85	Definitions.
G.S. 113A-103	Definitions.
G.S. 113A-104	Coastal Resources Commission.
G.S. 113A-107	State guidelines for the coastal area.
G.S. 113A-112	Planning grants.
G.S. 113A-113	Areas of environmental concern; in general.

G.S. 113A-118	Permit required.
G.S. 113A-124	Additional powers and duties.
G.S. 113A-129.2	Coastal Reserve Program.
G.S. 113A-153	North Carolina Land Policy Council.
G.S. 113A-164.3	Definitions.
G.S. 113A-166	Rules.
G.S. 113A-167	Existing billboards.
G.S. 113A-168	Removal, etc., of unlawful advertising.
G.S. 113A-169	Condemnation procedure.
G.S. 113A-170	Violation a misdemeanor; injunctive relief.
G.S. 113A-177	Statement of purpose.
G.S. 113A-178	Definitions.
G.S. 113A-183	Forest Development Fund.
G.S. 113A-193	Duties of Secretaries.
G.S. 113A-194	Assessment rates.
G.S. 113A-208	Regulation of mountain ridge construction by counties and cities.
G.S. 113A-212	Assistance to counties and cities under ridge law.
G.S. 113A-221	Definitions.
G.S. 113B-3	Composition of Council; appointments; terms of members; qualifications.
G.S. 120-70.33	Powers and duties.
G.S. 120-70.43	Powers and duties.
G.S. 120-70.62	Powers and duties.
G.S. 120-150	(Effective January 1, 1997) Creation; appointment of members.
G.S. 120-161	Facilities and staff.
G.S. 120-183.7	Fees for performing an inspection and putting an inspection sticker on a vehicle; use of civil penalties.
G.S. 121-4	Powers and duties of the Department of Cultural Resources.
G.S. 126-5	Employees subject to Chapter; exemptions.
G.S. 130A-310.8	Recordation of inactive hazardous substance or waste disposal sites.
G.S. 130A-336	Improvement permit and authorization for wastewater system construction required.
G.S. 130A-342	Aerobic systems.
G.S. 130B-2	Definitions.
G.S. 130B-22	Inter-Agency Committee on Hazardous Waste.
G.S. 136-21	Drainage of highway; application to court; summons; commissioners.
G.S. 136-28.8	Use of recycled materials in construction.
G.S. 136-44.12	Maintenance of roads and parking lots in areas administered by the Division of Parks and Recreation.

G.S. 136-44.36D	Recreational leasing requirements.
G.S. 136-102.3	Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Environment, Health, and Natural Resources.
G.S. 139-4	Powers and duties of Soil and Water Conservation Commission generally.
G.S. 139-5	Creation of soil and water conservation districts.
G.S. 139-7	District board of supervisors-appointive members; organization of board; certain powers and duties.
G.S. 139-8	Powers of districts and supervisors.
G.S. 139-13	Discontinuance of districts.
G.S. 139-46	Recreational and related aspects of watershed improvement programs.
G.S. 143-58.2	State policy; bid procedures and specifications; identification of products.
G.S. 143-116.8	Motor vehicle laws applicable to State parks and forests road system.
G.S. 143-138	North Carolina State Building Code.
G.S. 143-166.2	Definitions.
G.S. 143-166.7	Applicability of Article.
G.S. 143-166.13	Persons entitled to benefits under Article.
G.S. 143-169	Limitations on publications.
G.S. 143-177.3	Sources of funds.
G.S. 143-211	Declaration of public policy.
G.S. 143-212	Definitions.
G.S. 143-214.8	Wetlands Restoration Program; established.
G.S. 143-214.11	Wetlands Restoration Program; compensatory mitigation.
G.S. 143-214.13	Wetlands Restoration Program: reporting requirement.
G.S. 143-215.3B	Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund.
G.S. 143-215.18	Map or description of boundaries of capacity use areas.
G.S. 143-215.22I	Regulation of surface water transfers.
G.S. 143-215.22J	Scientific Advisory Council on Water Resources and Coastal Fisheries Management established; membership, compensation.
G.S. 143-215.40	Resolutions and ordinances assuring local cooperation.
G.S. 143-215.70	Secretary of Environment, Health, and Natural Resources authorized to accept applications.
G.S. 143-215.73A	Water Resources Development Plan.
G.S. 143-215.74F	Program authorized.
G.S. 143-215.77	Definitions.
G.S. 143-215.86	Other State agencies and State-designated local agencies.
G.S. 143-215.94HH	Oil spill contingency plan.

G.S. 143-240	Creation of Wildlife Resources Commission; districts; qualifications of members.
G.S. 143-243	Organization of the Commission; election of officers; Robert's Rules of Order.
G.S. 143-252	Article subject to Chapter 113.
G.S. 143-253	Jurisdictional questions.
G.S. 143-286.1	Nutbush Conservation Area.
G.S. 143-289	Contributions from certain counties and municipalities authorized; other grants or donations.
G.S. 143-320	Definitions.
G.S. 143-323	Functions of Department of Environment, Health, and Natural Resources.
G.S. 143-350	Definitions.
G.S. 143-439	Pesticide Advisory Committee; creation and functions.
G.S. 143-670	Definitions.
G.S. 143-671	Adopt-A-Beach Program; established; purposes.
G.S. 143B-2	Interim applicability of the Executive Organization Act of 1973.
G.S. 143B-6	Principal departments.
G.S. 143B-86	America's Four Hundredth Anniversary Committee-members; selection; quorum; compensation.
G.S. 143B-115	John Motley Morehead Memorial Commission-members; selection; quorum; compensation.
G.S. 143B-131.2	Roanoke Island Commission -- Purpose, powers and duties.
G.S. 143B-279.1	Department of Environment, Health, and Natural Resources-creation.
G.S. 143B-279.4	The Department of Environment, Health, and Natural Resources-Secretary; Deputy Secretaries.
G.S. 143B-281.1	Wildlife Resources Commission-transfer; independence preserved; appointment of Executive Director and employees.
G.S. 143B-282	Environmental Management Commission-creation; powers and duties.
G.S. 143B-282.1	Environmental Management Commission-quasi-judicial powers; procedures.
G.S. 143B-283	(Applicable January 1, 1997) Environmental Management Commission-members; selection; removal; compensation; quorum; services.
G.S. 143B-285.22	Creation.
G.S. 143B-285.23	Powers and duties of the Secretary of Environment, Health, and Natural Resources.
G.S. 143B-289.2	Definitions.
G.S. 143B-289.3	Marine Fisheries Commission-creation; purpose and transfer of function.

G.S. 143B-289.4	Marine Fisheries Commission-powers and duties.
G.S. 143B-289.5	Marine Fisheries Commission-members; selection; removal; compensation; quorum; services.
G.S. 143B-289.11	Jurisdictional questions.
G.S. 143B-289.12	Rules of Department continued.
G.S. 143B-289.20	Office of Marine Affairs-organization; powers and duties.
G.S. 143B-289.22	Local advisory committees; duties; membership.
G.S. 143B-290	North Carolina Mining Commission-creation; powers and duties.
G.S. 143B-294	Soil and Water Conservation Commission-creation; powers and duties.
G.S. 143B-295	Soil and Water Conservation Commission-members; selection; removal; compensation; quorum; services.
G.S. 143B-298	Sedimentation Control Commission-creation; powers and duties.
G.S. 143B-299	Sedimentation Control Commission-members; selection; compensation; meetings.
G.S. 143B-300	Water Pollution Control System Operators Certification Commission-creation; powers and duties.
G.S. 143B-301	Water Pollution Control System Operators Certification Commission-members; selection; removal; compensation; quorum; services.
G.S. 143B-308	Forestry Council-creation; powers and duties.
G.S. 143B-309	Forestry Council-members; chairperson; selection; removal; compensation; quorum.
G.S. 143B-313.1	North Carolina Parks and Recreation Authority; creation; powers and duties.
G.S. 143B-313.2	North Carolina Parks and Recreation Authority; members; selection; compensation; meetings.
G.S. 143B-317	Air Quality Compliance Advisory Panel-creation; powers and duties.
G.S. 143B-318	Air Quality Compliance Advisory Panel-members; chairman; selection; removal; compensation; quorum; services.
G.S. 143B-333	North Carolina Trails Committee-creation; powers and duties.
G.S. 143B-334	North Carolina Trails Committee-members; selection; removal; compensation.
G.S. 143B-335	North Carolina Zoological Park Council-creation; powers and duties.
G.S. 143B-336	North Carolina Zoological Park Council-members; selection; removal; chairman; compensation; quorum; services.
G.S. 143B-336.1	Special Zoo Fund.

G.S. 143B-344.17	North Carolina Aquariums Commission-organization, powers, and duties.
G.S. 143B-344.18	Commission created; membership.
G.S. 143B-407	(Applicable January 1,1997) North Carolina State Commission of Indian Affairs-membership; term of office; chairman; compensation.
G.S. 143B-411.1	North Carolina Advisory Council on the Eastern Band of the Cherokee-creation; membership; term of office.
G.S. 143B-417	North Carolina Internship Council-creation; powers and duties.
G.S. 143B-426.22	Governor's Management Council.
G.S. 143B-426.25	(Applicable January 1, 1997) North Carolina Farmworker Council-creation; membership; meetings.
G.S. 143B-437	Investigation of impact of proposed new and expanding industry.
G.S. 146-30	Application of net proceeds.
G.S. 146-8	Disposition of mineral deposits in State lands under water.
G.S. 147-45	Distribution of copies of State publications.
G.S. 150B-1	Policy and scope.
G.S. 158-8.2	Creation of Northeastern North Carolina Regional Economic Development Commission.
G.S. 159I-7	Solid Waste Management Loan Fund.
G.S. 161-22.2	Parcel identifier number indexes.

Section 120. References in the Session Laws to any department, division, or other agency that is transferred by this act shall be considered to refer to the successor department, division, or other agency. Every Session Law that refers to any department, division, or other agency to which this act applies that relates to any power, duty, function, or obligation of any department, division, or agency and that continues in effect after this act shall be construed so as to be consistent with this act.

Section 121. The Revisor of Statutes is authorized to correct any references or citations in the General Statutes to any portion of the General Statutes that is recodified, transferred, subdivided, or amended by this act by deleting incorrect references and substituting correct references.

Section 122. The Revisor of Statutes is authorized to delete any reference to the Department of Human Resources, the Secretary of Human Resources, and the Secretary of the Department of Human Resources in any portion of the General Statutes to which conforming amendments are not made by this act and to substitute, as appropriate and consistent with this act, the Department of Health and Human Services and the Secretary of Health and Human Services.

Section 123. The Revisor of Statutes is authorized to delete any reference to the Department of Environment, Health, and Natural Resources, the Secretary of Environment, Health, and Natural Resources, and the Secretary of the Department of Environment, Health, and Natural Resources in any portion of the General Statutes to which conforming amendments are not made by this act and to

substitute, as appropriate and consistent with this act, the Department of Environment and Natural Resources and the Secretary of Environment and Natural Resources.

Section 124. The Secretary of Health and Human Services may reorganize the Department of Health and Human Services in accordance with G.S. 143B-10 and shall report as required by that section. The Department of Health and Human Services shall report to the 1997 General Assembly, Regular Session 1998, on additional changes, including proposed legislation, necessary to effectuate the purposes of this act.

Section 125. All statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which is transferred pursuant to this act shall be transferred in their entirety.

Section 126. Unless specifically provided to the contrary or unless a contrary intent is clear from the context, any official designation of any agency transferred by this act as the State agency for any function, including specifically purposes of federal programs, shall be considered to be a designation of the successor agency.

Section 127. No later than 30 days after the effective date of this Act, the Department of Health and Human Services and the Department of Environment and Natural Resources shall enter into a Memorandum of Agreement that provides for coordination between the departments as to any functions shared by the departments as a result of the passage of this Act. This Memorandum shall require that the Department of Environment and Natural Resources provide staff to the Commission for Health Services for the Commission's duties under Articles 9 and 11 of Chapter 130A of the General Statutes. Until a Memorandum of Agreement has been entered into by the departments, the Department of Health and Human Services shall provide all clerical and other services required by the Commission for Health Services.

Section 128. This act becomes effective July 1, 1997.

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April 2, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff and Linda Attarian, Committee Counsel

RE: **Senate Bill 383-Health to DHR/DEHNR Name Change-Proposed Committee Substitute-CSLV-4**
Senators Perdue, Forrester, and Martin of Guilford

The 1989 General Assembly created the Department of Environment, Health and Natural Resources primarily to consolidate environmental functions within one department. Since the Division of Health Services within the Department of Human Resources had exercised a number of these functions, health responsibilities were also transferred into the new department of DEHNR. Since that time there has been a major emphasis, both State and nationally, on health issues and health reform efforts. In the structure of State government, the responsibility for public health, health care financing, regulation and purchase of health care services are spread across a number of agencies, divisions, and departments.

Senate Bill 383 combines the State's health and social services agencies and does the following:

(1) Creates a new Department called Health and Human Services;
(2) Transfers the functions of DHR into the newly created HHS
(3) Creates a new Department of Environment and Natural Resources;
(4) Transfers the public health functions of DEHNR, including the Commission for Health Services into the newly created HHS, but, pending a study by the ERC as directed in the act,
   (a) maintains the Division of Environmental Health in DENR, including sanitation and mosquito vector control;
   (b) provides that the responsibility for enforcement of Articles 10, North Carolina Drinking Water Act and 11, Wastewater Systems are retained by DENR, thus the DENR will retain

responsibility for drinking water as well as solid waste, and on-site waste water; and

(c) directs DENR **NOT** to consolidate the on-site wastewater or drinking water in the Division of Water Quality.

(5) Moves Boards and Commissions to appropriate department (overlap remains, e.g., Commission for Health Services continues as rule-making body for public drinking water, environmental health programs, solid waste management and wastewater systems within the Department of Environment and Natural Resources;

(6) Makes conforming changes throughout the General Statutes;

(7) Does not change existing division or office references except when necessary for meaning or when existing reference is obsolete;

(8) Secretary has normal reorganization powers under G.S. 143B, and shall report results of reorganization and any recommendations for changes in legislation to the 1998 General Assembly for consideration during the Short Session;

(9) Proposed effective date is July 1, 1997; and

(10) In addition HHS shall make the following reports;

(a) Report to the Joint Legislative Commission on Governmental Operations by December 31, 1997 on the Department's progress in incorporating health functions and agencies into the Department,

(b) Report to the General Assembly by May 1, 1998 on additional changes, including proposed legislation necessary to effectuate the purposes of the act including ERC study recommendations, and

(c) Report to the Joint Legislative Commission on Governmental Operations by October 31, 1998 on any proposed changes in the Department's structure of boards and commissions necessary to effectuate the purposes of this act and to deliver services more effectively.

(d) Report to the General Assembly by February 1, 1999 on the department's progress in adopting any rule changes necessary to effectuate the purposes of the act and any necessary legislation to change the structure of any boards and commissions

(11) The Environmental Review Commission shall report to the 1998 Session on a number of issues.

4/2/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 383
Proposed Committee Substitute S383-CSLV-4
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Health to DHR/DEHNR Name Change/AB. (Public)

Sponsors:

Referred to: Senate Children and Human Resources

March 14, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER HEALTH SERVICES TO THE DEPARTMENT OF HUMAN RESOURCES, TO CHANGE THE NAME OF THE DEPARTMENT OF HUMAN RESOURCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO CHANGE THE NAME OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART 1. TRANSFER AND RESTRUCTURE OF DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

Section 1. The name of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 3.

Department of ~~Human Resources.~~ Health and Human Services."

Section 2. G.S. 130A-55.1, 143B-136, 143B-137, 143B-138, and 143B-279.6 are repealed.

Section 3. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"**§ 143B-136.1. Department of Health and Human Services -- creation.**

There is created a department to be known as the 'Department of Health and Human Services,' with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law.

"**§ 143B-137.1. Department of Health and Human Services -- duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

"**§ 143B-138.1. Department of Health and Human Services -- functions and organization.**

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Division of Youth Services.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.

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March 17, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 383-Health to DHR/DEHNR Name Change**
Senators Perdue, Forrester, and Martin of Guilford

The 1989 General Assembly created the Department of Environment, Health and Natural Resources primarily to consolidate environmental functions within one department. Since the Division of Health Services within the Department of Human Resources had exercised a number of these functions, health responsibilities were also transferred into the new department of DEHNR.. Since that time there has been a major emphasis, both State and nationally, on Health issues and health reform efforts. In the structure of State government, the responsibility for public health, health care financing, regulation and purchase of health care services are spread across a number of agencies, divisions, and departments.

Senate Bill 383 combines the State's health and social services agencies and does the following:

(1) Creates a new Department called Health and Human Services;

(2) Transfers the functions of DHR into the newly created HHS ;

(3) Transfers the public health functions of DEHNR into the newly created HHS; but

(a) Creates a break between water quality and wastewater with the new Department of Environment and Natural Resources retaining solid waste management and wastewater, and

(b) Even though the Commission for Health Services is transferred to the new HHS, it keeps rulemaking for solid waste management and wastewater, with the new Department of Environment and Natural Resources staffing these solid waste management and wastewater functions for the Commission for Health Services pursuant to a Memorandum of Agreement.

(4) Renames remaining DEHNR to Department of Environment and Natural Resources;

(5) Moves Boards and Commissions to appropriate department (overlap remains, e.g., Commission for Health Services continues as rule-making body for solid waste management and wastewater systems within the Department of Environment and Natural Resources;

(6) Makes conforming changes throughout the General Statutes;

(7) Does not change existing division or office references except when necessary for meaning or when existing reference is obsolete;

(8) Secretary has normal reorganization powers under G.S. 143B, and shall report results of reorganization and any recommendations for changes in legislation to the 1998 General Assembly for consideration during the Short Session; and

(9) Proposed effective date is July 1, 1997.

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(8) Secretary has normal reorganization powers under G.S. 143B, and shall report results of reorganization and any recommendations for changes in legislation to the 1998 General Assembly for consideration during the Short Session; and

(9) Proposed effective date is July 1, 1997.

Proposed Committee Substitute 3/26/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 383
Proposed Committee Substitute S383-CSRM-01
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Health to DHR/DEHNR Name Change/AB. (Public)

Sponsors:

Referred to: Senate Children and Human Resources

March 14, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER HEALTH SERVICES TO THE DEPARTMENT OF HUMAN RESOURCES, TO CHANGE THE NAME OF THE DEPARTMENT OF HUMAN RESOURCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO CHANGE THE NAME OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART 1. TRANSFER AND RESTRUCTURE OF DEPARTMENT OF HUMAN RESOURCES AND DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

Section 1. The name of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"ARTICLE 3.

Department of ~~Human Resources.~~ Health and Human Services."

Section 2. G.S. 130A-55.1, 143B-136, 143B-137, 143B-138, and 143B-279.6 are repealed.

Section 3. Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"**§ 143B-136.1. Department of Health and Human Services -- creation.**

There is created a department to be known as the 'Department of Health and Human Services,' with the organization, duties, functions, and powers defined in this Article and other applicable provisions of law.

"**§ 143B-137.1. Department of Health and Human Services -- duties.**

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of public and mental health and rehabilitation with the intent to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible, the Department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. The Department shall establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures.

"**§ 143B-138.1. Department of Health and Human Services -- functions and organization.**

(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

(1) Division of Aging.
(2) Division of Services for the Blind.
(3) Division of Medical Assistance.
(4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
(5) Division of Social Services.
(6) Division of Facility Services.
(7) Division of Vocational Rehabilitation.
(8) Division of Youth Services.
(9) Division of Services for the Deaf and the Blind.
(10) Office of Economic Opportunity.
(11) Division of Child Development.
(12) Office of Rural Health.

(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type II transfer, as defined in G.S. 143A-6:

(1) Respite Care Program.
(2) Governor's Advisory Council on Aging.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 53*

Short Title: Penalties for Adult Care/Nursing Homes. (Public)

Sponsors: Senators Dannelly, Carpenter, Martin of Pitt, Cochrane; Albertson, Ballance, Hoyle, Lucas, Martin of Guilford, Perdue, and Winner.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"**§ 131D-34. Penalties; remedies.**

(a) Violations Classified. -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation. The

Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A ~~Violation.~~ Violation in homes licensed for nine or fewer beds. The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars($10,000) for each Type A Violation in facilities licensed for 10 or more beds.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type B Violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~
~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~
~~b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,~~ fine
for violating the same specific provision of a statute or regulation for which it received a citation during the previous ~~six months or within the time period of the previous licensure inspection, whichever time period is longer.~~ 12 months. The counting of the ~~six month~~ 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. ~~The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.~~ The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

(1) A licensed pharmacist;

(2) A registered nurse experienced in long-term care;

(3) A representative of a nursing home;

(4) A representative of an adult care home; and

(5) Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Section 2. G.S. 131E-129 reads as rewritten:

"**§ 131E-129. Penalties.**

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation. The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000)~~ five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to five hundred dollars ($500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation. The Department may direct the facility to establish a specific plan of correction within a specific time frame to address any Type B Violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the ~~date specified for correction~~ time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~

~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~

~~b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,~~ fine

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 ~~months or within the time period of the previous licensure inspection, whichever time period is longer.~~ months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this ~~section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.~~ section.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Section 3. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 53

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

S53-ARI-01.1 Page 1 of __

Date 4/2 ,1997

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

moves to amend the bill on page 4, between lines 40 and 41, by inserting the following:

"Each member shall complete at least eight hours of training through a program developed by the Division of Aging, Department of Human Resources, prior to serving on the Committee. The training program shall cover standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E."

SIGNED C. S. Daniels
Amendment Sponsor

SIGNED Jeanne Lucas
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

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March 12, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: John Young and Sue Floyd

RE: SB 53-Adult Care Home and Nursing Home Penalties

The 1987 General Assembly established an administrative penalties process for violations of nursing home and rest home facility laws. These statutes that allow the Department of Human Resources to levy penalties on nursing homes and adult care homes do the following:

1. Classifies violations into;
    a. Type A-violation that is a substantial risk that death or serious physical harm has or might occur with a range of fines from $250 to $5000,
    b. Type B-violation that has a direct relationship to the health, safety, or welfare of any patient, but which does not create substantial risk that death or serious physical harm will occur with a range of fines up to $500.
2. Provides additional penalties for failure to correct violations.
3. Sets factors to be considered in determining the amount of the penalty.
4. Sets procedures for contesting penalties under the Administrative Procedure act.
5. Allows civil action for recovery of unpaid penalties.
6. Provides review of penalties by the Penalty Review Committee established by G. S. 131D-34(h). The Committee is composed of nine members appointed by the Secretary of DHR.

In addition to civil money penalties, DHR has several enforcement remedies available in State law:

1. Provisional license;
2. Suspension of admissions;
3. Temporary management;
4. Revocation of a license; and
5. Summary suspension of a license.

Senate Bill 53 would make the following changes to the current statutes that levy civil penalties on adult care homes and nursing homes:

1. Changes the range of civil penalties for Type A violations to "not less than $500 nor more than $10,000". (Currently, not less than $250 nor more than $5000). This change would apply to adult care homes licensed for more than nine beds and nursing homes.
2. Deletes the money penalty for Type B violations but requires DHR to require a plan of correction and DHR may require a plan of correction within a specific time period to address any Type B violation.
3. Requires local county departments of social services and DHR's Division of Facility Services personnel submit proposed penalty recommendations within 45 days of the citation of a violation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 53*

Short Title: Penalties for Adult Care/Nursing Homes. (Public)

Sponsors: Senators Dannelly, Carpenter, Martin of Pitt, Cochrane; Albertson, Ballance, Hoyle, Lucas, Martin of Guilford, Perdue, and Winner.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"**§ 131D-34. Penalties; remedies.**

(a) Violations Classified. -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation. The

Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A ~~Violation.~~ Violation in homes licensed for nine or fewer beds. The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars($10,000) for each Type A Violation in facilities licensed for 10 or more beds.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type B Violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~
~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~
~~b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,~~ fine
for violating the same specific provision of a statute or regulation for which it received a citation during the previous ~~six months or within the time period of the previous licensure inspection, whichever time period is longer.~~ 12 months. The counting of the ~~six month~~ 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. ~~The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.~~ The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

(1) A licensed pharmacist;

(2) A registered nurse experienced in long-term care;

(3) A representative of a nursing home;

(4) A representative of an adult care home; and

(5) Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Section 2. G.S. 131E-129 reads as rewritten:

"**§ 131E-129. Penalties.**

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation. The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000)~~ five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to five hundred dollars ($500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation. The Department may direct the facility to establish a specific plan of correction within a specific time frame to address any Type B Violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the ~~date specified for correction~~ time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~

~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~

~~b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,~~ fine

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 ~~months or within the time period of the previous licensure inspection, whichever time period is longer.~~ months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this ~~section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.~~ section.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Section 3. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 346

Short Title: Juvenile Guardians/AB. (Public)

Sponsors: Senators Dannelly; Albertson, Cooper, Hartsell, Hoyle, Jordan, Lucas, Martin of Pitt, Martin of Guilford, Odom, and Warren.

Referred to: Children & Human Resources.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY OF JUVENILE GUARDIANS AND TO ALLOW THE COURT TO APPOINT PERSONS OTHER THAN RELATIVES AS JUVENILE CARETAKERS OR GUARDIANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-585 reads as rewritten:

"**§ 7A-585. Appointment of guardian.**

In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for ~~him~~ the juvenile and may represent the juvenile in legal actions before any court. The guardian ~~shall also have authority to~~ may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and ~~undergoing major surgery.~~ (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article ~~56,~~ 56 of this Chapter, or until the juvenile reaches the age of majority."

Section 2. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody ~~order.~~ order; assignment of guardianship.**

(a) In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.

In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was ~~entered.~~ entered, unless the court orders that the Director is not required to do so. The Director shall make timely requests for calendaring of the yearly reviews thereafter. The clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection ~~(a),~~ (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 12 months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has ~~been placed~~ resided with a relative or other suitable person for a ~~continuous~~ period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person at the review at which these findings are made.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following criteria:

(1) Services which have been offered to reunite the family;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
(6) When and if termination of parental rights should be considered;
(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, ~~shall have authority to~~ may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which continues the foster care placement of a juvenile."

Section 3. This act becomes effective October 1, 1997, and applies to review hearings for custody orders occurring on or after that date.

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April 1, 1997

MEMORANDUM

TO: Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Co-council

RE: Senate Bill 346 - **AN ACT TO EXPAND THE AUTHORITY OF JUVENILE GUARDIANS AND TO ALLOW THE COURT TO APPOINT PERSONS OTHER THAN RELATIVES AS JUVENILE CARETAKERS OR GUARDIANS.**
Sponsor: Senator Dannelly

Senate Bill 346 concerns the scope of judicial options in the placement of juveniles who are within the jurisdiction of the court, and expands the scope of control and authority a juvenile's legal guardian has over the juvenile, specifically with regard to consenting to certain actions on the part of the juvenile in place of the parent.

Section 1: G.S. 7A-585 allows a judge to appoint a guardian of the person for the juvenile. A guardian has the responsibility for the care, custody, and control of the juvenile or may arrange an alternative, suitable placement for the juvenile. Under current law, the guardian may consent, in the place of the juvenile's parent, to the following: marriage, enlisting in the armed forces, and consent to "major surgery". **The bill adds consent enrollment in school, and expands the "surgical" consent authority to include consent to any necessary remedial, psychological, medical and surgical treatment of the juvenile.**

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 2: In a case where the court removes a juvenile from the custody of the juvenile's parent, a judge must conduct a review hearing of the case six months after the custody removal order is signed, and then again at least once a year. **The bill amends this requirement by allowing the judge to specifically state on the custody order that the six month review is not required.**

Under current law a judge may waive the annual review hearing altogether or require less frequent hearings if the judge makes certain findings of fact. The findings must include evidence that the juvenile has resided with a relative for a period of one year or more; and the relative is the juvenile's designated permanent caretaker. **The bill amends this provision by expanding the scope of permissible facts that support the court's review waiver.** The bill will allow the judge waive the review hearing if the judge determines that the juvenile has resided for at least a year with a relative OR "some other suitable person" and also that the relative or "suitable person" is the juvenile's permanent caretaker OR a court appointed guardian.

In addition, **the bill allows the judge, at the completion of a review hearing, the option of appointing someone to be a guardian for the juvenile.** Under the current law, the judge may select among several disposition options, including placing the juvenile in the custody of a parent or relative. The bill would allow, in addition, the judge to appoint a guardian at the review hearing if the judge finds that the appointment of a guardian is in the juvenile's best interest.

The bill becomes effective October 1, 1997 and applies to review hearings for custody orders occurring on or after that date.

VISITOR REGISTRATION SHEET

Children and Human Resources — 4/2/97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCAHC
A.B. Swindell, IV	BFI
J. Craig [illegible]	[illegible]
Kim Smith	NCLM
Donna M [illegible]	D.C. Health Dept.
Conrad [illegible]	Alamance Co HD
[illegible]	Wake Co
Mike Reavis	Yadkin Co Env. Health
[illegible]	DEHNR
[illegible]	Robeson County Health Dept.
Deborah J. Bowen	NC Public Health Association
[illegible]	WC Env. Health Dept.
DAVE BRESDEN	DHR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Linda Sewell	DEH, DEHNR
William C. Jeter	DEHNR - DEH
Jessica Miles	DEHNR - DEH
Notar Newton	" "
Whitney Obing	DHHDDSAS
MARC Lodge	DHR
Sheri Schmidt	NCJCDC
Paul Fogleman	CHA / InForm Inc.
Tom Vanderbeck	DHR
Helen Lipinski	Meck Co DSS
Robert M. McConville	Doctor of Day

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lynda McDaniel	DHR/DFS
[signature]	NASW-NC
Megan Carney	BSW Student- Meredith College
Pam Deardorff	YA10/DOA
Rebecca Brigham	DHR/DSS
Joan McAllister	DHR/DSS
[signature]	DSS

AGENDA

April 9, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB53 Penalties for Adult Care/Nursing Homes.
SB346 juvenile Guardians/AB.
Sponsor: Senator Dannelly

SB595 Physician Assistant Licensure..
Sponsor: Senator Lucas

SB52 Adult Care Homes Annual Reporting Req..
Sponsor: Senator Carpenter

SB54 Residency Req. for Special Assistance.
Sponsor: Senator Cochrane

SB305 Solicitor's Security Option.
Sponsor: Senator Odom

SB488Voc. Rehab. Council Chair Selection.
Sponsor: Senator Kinnaird

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Cameron Wilson, Oriental, NC
Sponsor: Senator, Perdue

Tekisha Lambert, Reidsville, NC
Sponsor: Senator Foxx

Next Meeting Scheduled for Wednesday, April 16, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Wednesday, April 9, 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Wednesday, April 9, 1997 in Room 544 of the State Legislative Office Building.

Fourteen (14) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting to order.

Senate Bill 305 entitled Solicitor's Security Option was presented by its sponsor, Senator Odom Senator Odom explained the bill. After some discussion of the bill, it was decided to be reported out as favorable.

Senate Bill 595 entitled Physician Assistant Licensure was presented by its sponsor Senator Lucas. Senator Lucas explained the bill. After some discussion of the bill it was decided to be reported out as favorable.

Senate Bill 52 entitled Adult Care Homes Annual Reporting Req. This bill has a companion bill in the House, HB143. Senators Dannelly, Forrester and Cochran were appointed a a sub committee to examine these two bills and report to the committee.

Senate Bill 346 entitled Juvenile Guardians/AB. was presented by its sponsor Senator Dannelly. Staff gave additional explanation. Senator Wellons moved for an amendment. After some discussion of the bill it was decided it would be reported favorable as amended.

Senate Bill 488 entitled Voc.. Rehab. Council Chair Selection. was presented by its sponsor Senator Kinnaird . After some discussion of the bill it was decided to be reported out as favorable.

Senate Bill 54 entitled Residency Req. for Special Assistance. This bill has a companion bill in the House, HB81. Senators Dannelly, Forrester and Cochran were appointed a a sub committee to examine these two bills and report to the committee, in addition to SB53 entitled Penalties for Adult Care/Nursing, HB110 is also a companion bill.

The business being completed, the meeting was adjourned. The next scheduled meeting will be on Wednesday April 9, 1997 at 11:Odom in room 544 LOB.

Bernadette David-Yerumo
Committee Clerk

Jeanne H. Lucas
Senator Jeanne H. Lucas
Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, April 09, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **305** Solicitor's Security Option.
Sequential Referral: None
Recommended Referral: None

S.B. **488** Voc. Rehab. Council Chair Selection.
Sequential Referral: None
Recommended Referral: None

S.B. **595** Physician Assistant Licensure.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **346** Juvenile Guardians/AB.
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)**143** Adult Care Homes Annual Reporting Req.
Draft Number: PCS 1222
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 305

Short Title: Solicitor's Security Option. (Public)

Sponsors: Senator Odom.

Referred to: Children & Human Resources.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REINSTATE THE OPTION THAT A LICENSED SOLICITOR OF CHARITABLE SOLICITATIONS MAY SUBMIT A CERTIFICATE OF DEPOSIT IN LIEU OF A SECURITY BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131F-16 is amended by adding a new subsection to read:

"(d1) In lieu of the bond required under subsection (d) of this section, a solicitor may submit a certificate of deposit in the amount as for a bond pursuant to subsection (d) of this section. The certificate of deposit shall be payable to the State and unrestrictively endorsed to the Department; or, in the case of a negotiable certificate of deposit, unrestrictively endorsed to the Department; or, in the case of a nonnegotiable certificate of deposit, assigned to the Department in a form satisfactory to the Department. Access to the certificate of deposit in favor of the State is subject to the same conditions as for a bond under subsection (d) of this section and shall extend for a period not less than four years after the solicitor ceases activities that are subject to this Chapter. The Department shall deliver to the State Treasurer certificates of deposit submitted under this section."

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

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April 8, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 305-Solicitor's Security Option**
Senator Odom

HISTORY

The 1994 General Assembly repealed the existing Charitable Solicitations Act (G.S. 131C) and replaced it with a new chapter 131F regulating the solicitation of contributions by charities. Charitable organizations, as defined in 501 (c)(3) of the Internal Revenue Code, must be licensed (unless exempted), submit the specified fees, and comply with disclosure requirements. Prohibited solicitation practices, punishable as a Class 1 misdemeanor as well as by loss of license, are listed in the Chapter.

Senate Bill 305

G.S. 131F(d) requires that a solicitor at the time of application or renewal of a license post a surety bond with the solicitor as the principal obligor. The surety bond is determined by the amount of contributions received. (See Attachment)

Senate Bill 305 reinstates a provision in the repealed G.S. 131C that allows an option for a licensed solicitor to submit a certificate of deposit in lieu of a surety bond in the amount as for the bond. The certificate of deposit shall be payable to the State and unrestrictively endorsed to DHR. DHR shall deliver the Certificate of Deposit to the State Treasurer.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

addresses of all the officers, employees, and agents of the solicitor and all other persons with whom the solicitor has contracted to work under that solicitor's direction, including solicitors, shall be listed in the license application or furnished to the Department within five days after the date of employment or contractual arrangement. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for an additional one-year period upon application to the Department and payment of the license fee.

(d) Bond. — A solicitor shall, at the time of application or renewal of the license, file with and have approved by the Department a bond with a surety authorized to do business in this State and to which the solicitor is the principal obligor. The amount of the bond shall be determined as follows:

(1) Twenty thousand dollars ($20,000), if the contributions received for the last fiscal year were less than one hundred thousand dollars ($100,000).

(2) Thirty thousand dollars ($30,000), if the contributions received for the last fiscal year were at least one hundred thousand dollars ($100,000) but less than two hundred thousand dollars ($200,000).

(3) Fifty thousand dollars ($50,000), if the contributions received for the last fiscal year were at least two hundred thousand dollars ($200,000).

The solicitor shall maintain the bond in effect as long as the license is in effect. The liability of the surety under the bond shall not exceed an all-time aggregate liability of fifty thousand dollars ($50,000). The bond, which may be in the form of a rider to a larger blanket liability bond, shall be payable to the State and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this Chapter or any rule adopted under this Chapter.

(e) Departmental Review. — The Department shall examine each application filed by a solicitor. If the Department determines that the requirements are not satisfied, the Department shall notify the solicitor within 10 days after its receipt of the application. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the requirements are not satisfied, the applicant may request a hearing. The state shall bear the burden of proof at such hearing. The hearing shall be held within seven days after receipt of the request. Any recommended order, if one is issued, shall be rendered within three days after the hearing. The final order shall then be issued within two days after the recommended order. If there is no recommended order, the final order shall be issued within five days after the hearing. The proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provision set forth in this subsection prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 595

Short Title: Physician Assistant Licensure. (Public)

Sponsors: Senators Lucas; Dannelly, Forrester, Gulley, Jordan, Kinnaird, Martin of Guilford, and Shaw of Cumberland.

Referred to: Children & Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA MEDICAL BOARD TO LICENSE INSTEAD OF APPROVE PHYSICIAN ASSISTANTS, TO ISSUE A PHYSICIAN ASSISTANT LIMITED VOLUNTEER LICENSE, AND TO MAKE OTHER CHANGES IN THE STATUTES REGULATING PHYSICIAN ASSISTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-2(d) reads as rewritten:

"(d) Any member of the Board may be removed from office by the Governor for good cause shown. Any vacancy in the physician membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of physicians submitted by the North Carolina Medical Society Executive Council. Any vacancy in the ~~public~~ public, physician assistant, or nurse practitioner membership of the Board shall be filled by the Governor for the unexpired term."

Section 2. G.S. 90-11 reads as rewritten:

"**§ 90-11. Qualifications of applicant for license.**

Every applicant for a license to practice medicine or ~~for approval~~ to perform medical ~~acts~~ acts, tasks, and functions as a physician assistant in the State shall satisfy the North Carolina Medical Board that ~~such~~ the applicant is of good moral character and meets the other qualifications for the issuance of ~~such~~ a license ~~or for such approval~~ before any such license ~~or approval~~ is granted by the Board to ~~such~~ the applicant."

Section 3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-12.1. Physician assistant limited volunteer license.**

The Board shall issue a limited volunteer license which shall authorize a physician assistant to perform medical acts, tasks, and functions without payment or other compensation if the physician assistant meets one of the following:

(1) Holds a current license or registration in another state and submits proof of this status to the Board.

(2) Holds a current license in this State and is not currently employed as a physician assistant.

(3) Is a member of the United States armed services or is employed by the Veterans' Administration or another federal agency."

Section 4. G.S. 90-18(13) reads as rewritten:

"(13) ~~Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when~~

~~a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and~~

~~b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and~~

~~c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;~~

The performance of any medical acts, tasks, and functions by a licensed physician assistant at the direction or under the supervision of a physician in accordance with rules adopted by the Board, ~~Provided that this~~ This subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, ~~tasks or~~ tasks, and functions ~~which~~ that are otherwise permitted by law or established by custom. The Board shall authorize physician assistants licensed in this State or another state to perform specific medical acts, tasks, and functions during a disaster."

Section 5. G.S. 90-18.1 reads as rewritten:

"**§ 90-18.1. Limitations on physician assistants.**

(a) Any person who is ~~approved~~ licensed under the provisions of ~~G.S. 90-18(13)~~ G.S. 90-11 to perform medical acts, ~~tasks or~~ tasks, and functions as an assistant to a physician may use the title 'physician ~~assistant.'~~ assistant'. Any other person who uses the title in any form or holds out to be a physician assistant or to be so ~~approved,~~ licensed, shall be deemed to be in violation of this Article.

(b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and ~~safety;~~ safety.

(2) The physician assistant ~~has current approval from~~ holds a current license issued by the ~~Board;~~ Board.

(3) The North Carolina Medical Board has assigned an identification number to the physician assistant which is shown on the written ~~prescription; and~~ prescription.

(4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Physician assistants are authorized to compound and dispense drugs under the following conditions:

(1) The function is performed under the supervision of a licensed ~~pharmacist; and~~ pharmacist.

(2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(3) The physician assistant holds a current license issued by the Board.

(d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, ~~nursing homes~~ nursing homes, and other health facilities under the following conditions:

(1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to order medications, ~~tests~~ tests, and treatments with such limitations as the Board may determine to be in the best interest of patient health and ~~safety;~~ safety.

(2) The physician assistant ~~has~~ holds a current ~~approval from~~ license issued by the ~~Board;~~ Board.

(3) The supervising physician has provided to the physician assistant written instructions about ordering medications, ~~tests~~ tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, ~~test~~ test, or treatment is ~~ordered; and~~ ordered.

(4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, ~~tests~~ tests, and treatments, including procedures for verification of the physician

assistants' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a physician assistant or order given by a physician assistant for medications, ~~tests~~ tests, or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and ~~such~~ the supervising physician shall be responsible for authorizing ~~such~~ the prescription or order.

(f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, ~~tests~~ tests, or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician."

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

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April 6, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 595-Physician Assistant Licensure**
Senator Lucas

History

In the fall of 1965 Duke Medical School enrolled four ex-navy corpsman in the nation's first physician's assistant training program. Bowman Gray also began training P.A's. However, the graduates of both these schools and their physician employers were troubled by the legal uncertainties caused by the North Carolina Medical Practice Act. To study these issues, a conference of lawyers, doctors, educators, public officials and others met at Duke in October 1970. They decided to recommend an amendment to the Medical Practice Act that would specifically exempt P.A.'s from the Act but require "approval" by and "registered" with the Board. A P.A. had to be associated with a particular physician. Also, one physician was not allowed to have more than two assistants registered for his supervision. These recommendations were adopted by the 1971 General Assembly in G.S. 90-18(13).

Senate Bill 595

Senate Bill 595 would make the following changes to the Medical Practice Act:

(1) Authorize the North Carolina Medical Board to license instead of approve physician assistants. (This change is already reflected in the Board rules);

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(2) Add a new G.S. 90-12.1 to authorize volunteer limited license for P.A.'s to perform work without compensation if they meet the specified qualifications;

(3) Deletes the requirement that a physician may only supervise two P.A.'s; and

(4) Provides that any vacancy in the public, P.A., or nurse practitioner membership of the Medical Board (now, any vacancy in public membership) will be filled by the Governor for the unexpired term.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 52*

Short Title: Adult Care Homes Annual Reporting Req. (Public)

Sponsors: Senators Carpenter, Cochrane, Martin of Pitt, and Dannelly.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE DATE ANNUAL AUDITED REPORTS ARE TO BE SUBMITTED BY ADULT CARE HOMES TO THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-4.2(e) reads as rewritten:

"(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period shall be October 1 through September 30, with the annual report due by the following ~~March 1.~~ December 31."

Section 2. G.S. 131D-4.2(g) reads as rewritten:

"(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31. Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 143
Proposed Senate Committee Substitute H143-PCS1222

Short Title: Adult Care Homes Annual Reporting Req. (Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE ANNUAL COST REPORTING REQUIREMENTS OF ADULT CARE HOMES TO THE DEPARTMENT OF HUMAN RESOURCES AND TO CHANGE THE DEPARTMENT'S ENFORCEMENT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-4.2(e) reads as rewritten:

"(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period for facilities licensed pursuant to this Chapter or Chapter 131E of the General Statutes shall be October 1 through September 30, with the annual report due by the following ~~March 1.~~ December 31, unless the Department determines there is good cause for delay. The annual reporting period for facilities licensed pursuant to Chapter 122C of the General Statutes shall be July 1 through June 30, with the annual report due by the following December 31, unless the Department determines there is good cause for delay. Under this subsection, good cause is an action that is uncontrollable by the provider. If the Department finds good cause for delay, it may extend the deadline for filing a report for up to an additional 30 days."

Section 2. G.S. 131D-4.2(g) reads as rewritten:

"(g) The Department shall suspend admissions to facilities that fail to submit annual reports by December 31, or by the date established by the Department when good cause for delay is found pursuant to G.S. 131D-4.2(e). Suspension of

admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes."

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

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April 1, 1997

MEMORANDUM

TO: Senate Children and Human Resources Committee

FROM: Sue Floyd, Committee Staff

RE: Proposed Committee Substitute for HB 143 -
Adult Care Homes Annual Reporting Requirement

The proposed committee substitute makes the following changes to the current law. Items 1 and 4 were in the original bill as introduced, and items 2 and 3 are additional changes requested by DHR.

1. Changes the current annual due date from March 1 to December 31 for all adult care homes to submit cost reports to the Department of Human Resources.
2. Changes the reporting period for 122C facilities to July 1 through June 30. Keeps the reporting period for all other facilities at October 1 through September 30.
3. Authorizes DHR to grant up to a 30-day extension on due dates for good cause. Good cause is an action that is uncontrollable by the provider.
4. Authorizes DHR to suspend admissions to facilities that fail to submit reports when due.

The act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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April 8, 1997

M E M O R A N D U M

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd, Committee Staff

RE: SB 488 - Voc. Rehab. Council Chair Selection

SB 488 amends G.S. 143-548(c) to bring State law into compliance with federal mandates.

The Vocational Rehabilitation Advisory Council is established within DHR's Division of Vocational Rehabilitation Services. One of its primary functions is to oversee the Division's performance in carrying out its responsibilities under Title I of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1992. Some of the main responsibilities include determining eligibility of clients, the effectiveness of services provided, and the State's performance of functions that affect individuals with disabilities in achieving rehabilitation goals and objectives.

The 1992 amendments mandate that in states in which the Governor does not have veto power, the Governor may appoint the chairperson of the Advisory Council or require the Council to designate a member as chairperson. In states where the Governor does have veto power, the Council must select a chairperson from among its membership. Until now G.S. 143-548(c) has authorized the Governor to designate one of the Council members as chairperson. Now that our Governor has veto power, SB 488 would amend the statutes to provide that the Council select its chairperson from among its membership.

S488-SMRI-01

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 346

Short Title: Juvenile Guardians/AB. (Public)

Sponsors: Senators Dannelly; Albertson, Cooper, Hartsell, Hoyle, Jordan, Lucas, Martin of Pitt, Martin of Guilford, Odom, and Warren.

Referred to: Children & Human Resources.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY OF JUVENILE GUARDIANS AND TO ALLOW THE COURT TO APPOINT PERSONS OTHER THAN RELATIVES AS JUVENILE CARETAKERS OR GUARDIANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-585 reads as rewritten:

"**§ 7A-585. Appointment of guardian.**

In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for ~~him~~ the juvenile and may represent the juvenile in legal actions before any court. The guardian ~~shall also have authority to~~ may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and ~~undergoing major surgery.~~ (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article ~~56,~~ 56 of this Chapter, or until the juvenile reaches the age of majority."

Section 2. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody ~~order.~~ order; assignment of guardianship.**

(a) In any case where the judge removes custody from a parent or person standing in loco parentis because of dependency, neglect or abuse, the juvenile shall not be returned to the parent or person standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision.

In any case where custody is removed from a parent, the judge shall conduct a review within six months of the date the order was entered, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was ~~entered.~~ entered, unless the court orders that the Director is not required to do so. The Director shall make timely requests for calendaring of the yearly reviews thereafter. The clerk shall give 15 days' notice of the review to the parent or the person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, foster parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection ~~(a),~~ (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 12 months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has ~~been placed~~ resided with a relative or other suitable person for a ~~continuous~~ period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person at the review at which these findings are made.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following criteria:

(1) Services which have been offered to reunite the family;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
(6) When and if termination of parental rights should be considered;
(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, ~~shall have authority to~~ may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which continues the foster care placement of a juvenile."

Section 3. This act becomes effective October 1, 1997, and applies to review hearings for custody orders occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 488

Short Title: Voc. Rehab. Council Chair Selection. (Public)

Sponsors: Senator Kinnaird.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCESS OF SELECTING THE CHAIR OF THE VOCATIONAL REHABILITATION ADVISORY COUNCIL TO CONFORM WITH FEDERAL LAW AND TO PROVIDE THAT THE CHAIR'S TERM SHALL NOT EXCEED THREE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-548(c) reads as rewritten:

"(c) ~~The Governor shall designate as Chair of the Council one of the members of the Council.~~ The Council shall elect one of the voting members of the Council as Chair of the Council. The Chair's term ~~is~~ shall not exceed a single three-year term."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

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

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____

by _____

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Janet Simoneau	NCARF
Harvey Estes	NC Med. Soc. Fdn
Lisa Bacer	Physician Assistant
Robert Wooten	NC Academy of Physician Assistants
Patricia Brown	NCALA
Christi Y. Whaley	NCABA
Yvonne Kiser	NCALA
J. Craig Lewis	PCMH
D. Gray Wellons	NCALA
John Bode	Bode Call & Stroupe
Adam Searing	NC Health Access Coal.
Marrese Ransome	DSS
Rebecca Brigham	NCDHHR - DSS
William Breeze	NC Med Bd.
Jackie Sheppard	DHR/DFS
Lionel Sandolph	DHR/DFS
Suzanne Williams	BOE/Asso/LTC
LOU WILSON	CTC
Craig Smith	NCACC
Mary Tilley	NCHA
Mari A. Lewis	MSA Association
Lynda McDaniel	DHR/DFS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Satchel Paige	NCACC
Evelyn Hawthorne	NCHA
John [illegible]	DOT/DOT
Tom Washburn	DHR Controller Office
Jaylie Stalnaker	DHR - Voc. Rehab
Helen Legma	Meck Co. DSS
Mary [illegible]	Tyson & Smith
Stephen W. [illegible]	NC Med Soc.
Amy Jo Bain	Smith Anderson
Charles F. Wilson	Doctor of the Day

April 16, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB483 Phys. Svces. Fee/AB
Sponsor: Senator Lucas

SB53 Penalties for Adult Care/Nursing Homes.
Sponsor: Senator Dannelly

SB54 Residency Req. for Special Assistance.
Sponsor: Senator Cochrane

SB479 Reg. Deeds - No Abuse Info/AB.
Sponsor: Senator Lucas

SB481 Glaucoma Program Repealed/AB.
Sponsor: Senator Lucas

SB484 Vital Records Access/AB.
Sponsor: Senator Lucas

SB583 Physician Education and Registration.
Sponsor: Senator Forrester

SB806 Childhood Lead Exposure Control.
Sponsor: Senator Conder

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Andy Yates, Harrisburg,NC
Sponsor: Senator, Hartsell

Laticia King , Releigh, NC
Sponsor: Senator Reeves

Senate Committee on Children & Human Resources
Minutes of Wednesday, April 16, 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Wednesday, April 16, 1997 in Room 544 of the State Legislative Office Building.

Fifteen (15) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting to order.

Senate Bill 583 entitled Physician Education and Registration was presented by its sponsor, Senator Forrester. Senator Forrester explained the bill. After some discussion of the bill, it was decided to be reported out as favorable.

Senate Bill 483 entitled Phys. Svces. Fee/AB. was presented by its sponsor Senator Lucas. Senator Lucas explained the bill. After some discussion of the bill it was decided to be reported out as favorable. This bill is to be referred to finance.

Senate Bill 54 Residency Req. for Special Assistance. Senator Cochrane the sponsor suggested that HB81 be put in for substitution. — action needed

Senate Bill 479 entitled Reg. Deeds-No Abuse Info/AB. was presented by its sponsor Senator Lucas. After some discussion of the bill it was decided it would be reported out as favorable.

Senate Bill 481 entitled Glaucoma Program Repealed/AB. was presented by its sponsor Senator Lucas. After some discussion of the bill it was decided to be reported out as favorable.

Senate Bill 806 entitled Childhood Lead Exposure Control. was presented by its sponsor Senator Conder. Senator Conder presented a committee substitute. After some discussion of the bill it was decided to be reported out as Unfavorable as to bill, but favorable as to committee substitute bill..

The business being completed, the meeting was adjourned. The next scheduled meeting will be on Wednesday April 23, 1997 at 11:Odom in room 544 LOB.

Bernadette David-Yerumo
Committee Clerk

Senator Jeanne H. Lucas
Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, April 16, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **479** Reg. Deeds - No Abuse Info/AB.
Sequential Referral: None
Recommended Referral: None

S.B. **481** Glaucoma Program Repealed/AB.
Sequential Referral: None
Recommended Referral: None

S.B. **483** Phys. Svces. Fee/AB.
Sequential Referral: Appropriations
Recommended Referral: None

S.B. **583** Physician Education and Registration.
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)**81** Residency Req. for Special Assistance.
Draft Number: PCS7237
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Thursday, April 17, 1997

SENATOR LUCAS,

submits the following with recommendations as to passage:

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

S.B. **806** Childhood Lead Exposure Control.

Draft Number:	PCS6649
Sequential Referral:	None
Recommended Referral:	Appropriations
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 583

Short Title: Physician Education and Registration. (Public)

Sponsors: Senator Forrester.

Referred to: Children & Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PHYSICIANS TO COMPLETE ONE HUNDRED FIFTY HOURS OF CONTINUING EDUCATION, TO REQUIRE PHYSICIANS TO REGISTER ANNUALLY WITH THE NORTH CAROLINA MEDICAL BOARD AND TO MAKE A TECHNICAL CHANGE IN THE PRACTICE OF MEDICINE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-14(a) reads as rewritten:

"(a) The Board shall have the power to deny, annul, suspend, or revoke a license, or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

(1) Immoral or dishonorable conduct.

(2) Producing or attempting to produce an abortion contrary to law.

(3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with ~~his~~ an application for a license.

(4) Repealed by Session Laws 1977, c. 838, s. 3.

(5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians

designated by the Board before or after charges may be presented against ~~him,~~ the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.

(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of ~~his~~ the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.

(7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

(8) By false representations has obtained or attempted to obtain practice, money or anything of value.

(9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which ~~he~~ the physician has been educated.

(10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.

(11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating ~~his~~ the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, by members of the Board or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

(12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.

(13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.

(14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

(15) The failure to complete 150 hours of continuing medical education during any three calendar years. At least 60 of the hours required shall consist of the physician attending formally organized educational meetings, including conferences, symposia, and other similar learning activities. The physician shall maintain written documentation of all hours completed and such documentation may be inspected by the Board to verify the physician's compliance with this subdivision.

For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to ~~him,~~ a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of ~~his~~ the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded, except that no license that has been revoked shall be restored for a period of two years following the date of revocation."

Section 2. G.S. 90-15.1 reads as rewritten:

"**§ 90-15.1. (Effective January 1, 1998) Registration every year with Board.**

Every person licensed to practice medicine by the North Carolina Medical Board ~~shall, prior to January 31 of each year,~~ shall register ~~with~~ annually with the Board within 30 days of the person's birthday. ~~the Board.~~ A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and shall pay a registration fee fixed by the Board not in excess of one hundred dollars ($100.00). For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register ~~by January 31~~ as required by this section shall pay an additional fee of twenty dollars ($20.00) to the Board. The license of any physician who fails to register and ~~said~~ the failure continues for a period of 30 days after certified notice of ~~said~~ the

failure, is automatically suspended. Upon payment of all accumulated fees and penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."

Section 3. G.S. 90-16 reads as rewritten:

"**§ 90-16. Board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.**

The North Carolina Medical Board shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the ~~Board of Medical Examiners of the State of North Carolina,~~ North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent.

The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician."

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

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.

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April 14, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 483-Increase the Amount Paid to Physicians to Read X-Ray Films for the Dusty Trades Program**
Senator Lucas

Senate Bill 483 will increase the fee paid to members of the Advisory Medical Committee in the Dusty Trades Program to examine and read chest x-ray films. The current fee is specified in G.S. 97-72(b) which states that "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) per film examined." The bill would increase the fee from $10 to $40 per film. The fee is established by the Secretary of DHR within the requirements of the statute and paid by the employers of workers in the dusty trades.

The North Carolina Dusty Trades Program is an industrial hygiene and medical surveillance program required by the Worker's Compensation Act, enforced by the North Carolina Industrial Commission, and administered by public health staff of DEHNR. The purpose of the program is to minimize lung disease due to the exposure of asbestos and silica in certain industries. An Advisory Medical Committee of the Dusty Trades Program conducts and provides written reports of medical examinations of workers potentially exposed to asbestos and silica. One member of the Advisory Medical Committee reads preemployment and periodic chest x-rays and refers those workers with suspect disease to another member of the Committee for a comprehensive medical evaluation.

The principal x-ray reader for the Dusty Trades Program has been reading the films since the program began in the late 30's. He is now over 90 years of age. It is unlikely that any other physician will do the readings for the current fee authorized in G.S. 97-72(b).

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 54*

Short Title: Residency Req. for Special Assistance. (Public)

Sponsors: Senators Cochrane, Martin of Pitt, Carpenter, Dannelly; Forrester, Foxx, and Ledbetter.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NINETY-DAY WAITING PERIOD FOR NEW RESIDENTS OF NORTH CAROLINA WHO NEED RESIDENCE IN ADULT CARE HOMES AND WHO NEED STATE-COUNTY SPECIAL ASSISTANCE FUNDS TO PAY FOR THEIR CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-41(b) reads as rewritten:

"(b) Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and

(3) Is a resident of ~~North Carolina.~~ North Carolina for at least 90 days prior to receiving this assistance."

Section 2. This act is effective when it becomes law and applies to residents making application for assistance on or after that date.

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April 15, 1997

SB 54

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd and John Young, Staff

RE: H81-PCSRI-01

The Special Assistance for Adults program was established by the General Assembly fifty years ago to provide domiciliary care for North Carolina residents. The Special Assistance program is funded equally with State and county funds. During SFY 95-96, there were 20,000 SA recipients and total expenditures were $91.1 million.

The current State Statute and APA rules governing the Special Assistance program require the applicant/recipient to be a State resident. Assistance is granted to a person who: (1) is 65 years of age or older or between 18 and 65 and is permanently, totally disabled; (2) has insufficient income or resources, and (3) is a resident of North Carolina. However they do not: (1) set a minimum period of time the applicant must have lived in North Carolina in order to be able to apply for SA; (2) set a period of time the applicant must intend to remain in the State in order to receive SA; or (3) require that the applicant live in a private living arrangement prior to receiving SA.

As recommended by the Study Commission on Aging, this PCS **establishes a 90-day waiting period for new residents** of North Carolina who need residence in adult care homes and who need special assistance. In addition, it clarifies that a **person discharged from a State facility (as listed in G.S. 122C-181) who meets the other requirements and was a patient there because of an interstate mental health compact is eligible** for special assistance.

The Attorney General's Office advised the Commission that establishing a state residency requirement that includes a waiting period could be challenged in court. If a 90 day residency is challenged, the courts will look for any compelling reason the State has for imposing the requirement. While the court will look to see if the fundamental right to travel in inhibited, defensible arguments can be made that a short waiting period is reasonable in order for the State to protect itself from fraud by verifying that an applicant is a bona fide resident of the State.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 81*
Committee Substitute Favorable 3/6/97
Proposed Senate Committee Substitute H81-PCS7237

Short Title: Residency Req. for Special Assistance. (Public)

Sponsors:

Referred to:

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NINETY-DAY WAITING PERIOD FOR NEW RESIDENTS OF NORTH CAROLINA WHO NEED RESIDENCE IN ADULT CARE HOMES AND WHO NEED STATE-COUNTY SPECIAL ASSISTANCE FUNDS TO PAY FOR THEIR CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-41(b) reads as rewritten:

"(b) Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled; and

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and

(3) ~~Is a resident of North Carolina.~~ Is one of the following:

a. A resident of North Carolina for at least 90 days prior to receiving this assistance; or

b. A person discharged from a State facility who was a patient in the facility as a result of an interstate mental health compact. As used in this sub-subdivision, the term State facility is a facility listed under G.S. 122C-181."

Section 2. This act is effective when it becomes law and applies to residents making application for assistance on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 479*

Short Title: Reg. Deeds - No Abuse Info/AB. (Public)

Sponsors: Senators Lucas; Dalton, Dannelly, Forrester, Hartsell, Jordan, Shaw of Cumberland, Soles, and Weinstein.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW REQUIRING THE REGISTER OF DEEDS TO DISTRIBUTE INFORMATION ON THE DANGERS OF DRUG AND ALCOHOL ABUSE DURING PREGNANCY WITH EACH MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-11.1 reads as rewritten:

"**§ 161-11.1. Fees for Children's Trust Fund.**

~~(a)~~ Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

~~(b) The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of Environment, Health, and Natural Resources, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund.~~"

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

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April 11, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd, Committee Staff

RE: SB 479 - Reg. Deeds - No Abuse Info

SB 479 is recommended by the Department of Environment, Health, and Natural Resources. It repeals the mandate for county registers of deeds to distribute a drug abuse pamphlet with each marriage license issued. The pamphlet contains information on the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother.

The distribution of this information by the registers of deeds was begun in 1990 when G.S. 161-11.1(b) became law. Copies of the pamphlets have been supplied to the registers of deeds by the Department of Environment, Health, and Natural Resources, and the enabling act specified that no additional funds shall be appropriated for this purpose.

SB479-SMRI-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 481*

Short Title: Glaucoma Program Repealed/AB. (Public)

Sponsors: Senators Lucas; Conder, Dannelly, Hartsell, Jenkins, Jordan, Odom, Shaw of Cumberland, Soles, and Wellons.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES CONCERNING THE DETECTION, PREVENTION, CARE, AND TREATMENT OF GLAUCOMA.

The General Assembly of North Carolina enacts:

Section 1. The title to Part 3 of Article 7 of Chapter 130A of the General Statutes reads as rewritten:

"Part 3. ~~Glaucoma and~~ Diabetes."

Section 2. G.S. 130A-221 reads as rewritten:

"**§ 130A-221. Department to establish program.**

(a) The Department shall establish and administer a program for the detection and prevention of ~~glaucoma and~~ diabetes and the care and treatment of persons with ~~glaucoma and~~ diabetes. The program may include:

(1) Education of patients, health care personnel and the public;

(2) Development and expansion of services to persons with ~~glaucoma and~~ diabetes; and

(3) Provision of supplies, equipment and medication for detection and control of ~~glaucoma and~~ diabetes.

(b) The Commission is authorized to adopt rules necessary to implement the program."

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

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April 16, 1997

MEMORANDUM

TO: Senate Human Resouces Committee

FROM: Linda Attarian, Committee Co-Counsel

RE: SB 481– First Edition – **AN ACT TO AMEND THE GENERAL STATUTES CONCERNING THE DETECTION, PREVENTION, CARE, AND TREATMENT OF GLAUCOMA.**

The bill amends G.S. 130A-221 by repealing the provision requiring the Department to establish a program for the detection and prevention of glaucoma and the care and treatment of persons who suffer from glaucoma. The bill will not prohibit or otherwise interfere with any ongoing glaucoma prevention programs conducted by local Health Departments.

Glaucoma is an eye disease in which the normal fluid pressure inside the eyes slowly rises, leading to vision loss and even blindness. At first, there are no symptoms. Vision stays normal and there is no pain. However as the disease progresses, a person with glaucoma may notice his or her side vision gradually failing. As the disease worsens, the field of vision narrows and blindness results.

Glaucoma is detected by tests designed to measure eye pressure during an eye examination. However, this test alone cannot detect glaucoma. Glaucoma is most often found during eye examinations through dilated pupils. This allows the eye care professional to see more of the inside of the eye to check for signs of glaucoma. Because of the appropriate technology necessary for screening and diagnosis has developed beyond what can be provided by local health departments, screening services are rarely being provided at such sites.

The act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 806

Short Title: Childhood Lead Exposure Control. (Public)

Sponsors: Senators Conder, Forrester; and Hartsell.

Referred to: Children & Human Resources.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE CONTROL OF LEAD EXPOSURE OF CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. Part 4 of Article 5 of Chapter 130A of the General Statutes is amended by adding the following new sections to read:

"**§ 130A-131.7. Definitions.**

As used in this Part, unless the context requires otherwise, the term:

(1) 'Abatement' means the elimination or control of lead poisoning hazards by methods approved by the Department.

(2) 'Confirmed elevated blood lead level' means a blood lead concentration of 20 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.

(3) 'Day care facility' means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the needs of children under 6 years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(4) 'Department' means the Department of Environment, Health, and Natural Resources or its authorized agent.

(5) 'Dwelling' or 'Dwelling unit' means a structure, all or part of which is designed or used for human habitation, including the

common areas, the grounds, any outbuildings, or other structures appurtenant to the dwelling or dwelling unit.

(6) 'Lead poisoning hazard' means the presence of readily accessible or mouthable lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence or 0.5 percent or greater by chemical analysis; or 15 parts per billion or greater in drinking water; or 100 micrograms per square foot or greater for dust on floors; or 500 micrograms per square foot or greater for dust on window sills; or 800 micrograms per square foot or greater for dust in window troughs, or soil lead concentrations in an amount greater than or equal to 400 parts per million that is determined by the Department to present a hazard in light of (i) the condition and use of the land and (ii) other relevant factors.

(7) 'Lead-safe housing' is housing that has either been tested by a person that is certified by the Department to perform such testing and found to have no lead-based paint hazards within the meaning of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 14 U.S.C. § 485(b)(15), or which meets the requirements of the maintenance standard.

(8) 'Managing agent' means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(9) 'Maintenance standard' means the following:

a. Repairing and repainting areas of deteriorated paint inside a residential housing unit;

b. Cleaning the interior of the unit to remove dust that may contain hazardous amounts of lead as defined by the Department;

c. Adjusting doors and windows to minimize friction or impact on surfaces;

d. Subject to the occupant's approval, appropriately cleaning any carpets;

e. Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and

f. Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.

(10) 'Mouthable lead-bearing substance' means any substance on surfaces or fixtures five feet or less from the floor or ground that form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are freestanding, containing lead-contaminated dust at a level that constitutes a lead poisoning

hazard. Mouthable surfaces or fixtures include toys, vinyl miniblinds, doors, door jams, stairs, stair rails, windows, windowsills, and baseboards.

(11) 'Persistent elevated blood lead level' means a blood lead concentration of 15-19 micrograms per deciliter determined by the lowest of three consecutive blood tests. The first two blood tests shall be performed within a six-month period, and the third blood test shall be performed at least 12 weeks and not more than six months after the second blood test.

(12) 'Readily accessible lead-bearing substance' means any substance containing lead at a level that constitutes a lead poisoning hazard which can be ingested or inhaled by a child under 6 years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include soil, water, and paint that is chalking.

(13) 'Regularly visits' means presence at a dwelling, dwelling unit, school, or day care facility for at least two days a week for more than three hours per day.

(14) 'Supplemental address' means a dwelling, dwelling unit, school, or day care facility where a child with a persistent elevated blood lead level or a confirmed elevated blood lead level regularly visits or attends. Supplemental address also means a dwelling, school, or day care facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of a persistent elevated blood lead level or a confirmed elevated blood lead level.

"§ 130A-131.8. Reports of blood levels in children.

All laboratories doing business in this State shall report to the Department blood lead levels of one microgram per deciliter or greater for children less than 6 years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made within five working days after test completion on forms provided by the Department or on self-generated forms containing: the child's full name, date of birth, sex, race, address, and Medicaid number, if any; the name, address, and telephone number of the requesting health care provider; the name, address, and telephone number of the testing laboratory; the laboratory results, the specimen type -- venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. Such reports may be made by electronic submissions.

"§ 130A-131.9. Examination and testing.

When the Department has a reasonable suspicion that a child less than 6 years of age has a persistent elevated blood lead level or a confirmed elevated blood lead level, the Department shall require that child to be examined and tested within 30 days. The Department shall require from the owner, managing agent, or tenant of the dwelling, dwelling unit, school, or day care facility information on each child who

resides in, regularly visits, or attends, or, who has within the past six months, resided in, regularly visited, or attended the dwelling or facility. The information required shall include each child's name and date of birth, the names and addresses of each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department.

"§ 130A-131.9A. Investigation to identify lead poisoning hazards.

(a) When the Department learns of a persistent elevated blood lead level or a confirmed elevated blood lead level, the Department shall conduct an investigation to identify the lead poisoning hazards to children. The Department shall investigate the dwelling, dwelling unit, school, or day care facility where the child with the persistent elevated blood lead level or the confirmed elevated blood lead level resides, regularly visits, or attends. The Department shall also investigate the supplemental addresses of the child who has a persistent elevated blood lead level or a confirmed elevated blood lead level.

(b) The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit, school, or day care facility occupied, regularly visited, or attended by a child less than 6 years of age.

(c) In conducting an investigation, the Department may take samples of surface materials, or other materials suspected of containing lead, for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy or equivalent methods approved by the Department.

"§ 130A-131.9B. Notification.

Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the dwelling, dwelling unit, school, or day care facility and to all persons residing in or attending the dwelling or facility. The written notice to the owner or managing agent shall include a list of possible methods of abatement of the lead poisoning hazard.

"§ 130A-131.9C. Abatement.

(a) Upon determination that a child less than 6 years of age has a confirmed elevated blood lead level of 20 micrograms per deciliter or greater and that child resides in, attends, or regularly visits, a dwelling, dwelling unit, school, or day care facility containing lead poisoning hazards, the Department shall require abatement of the lead poisoning hazards. The Department shall also require the abatement of the lead poisoning hazards identified at the supplemental addresses of a child less than 6 years of age with a confirmed elevated blood lead level of 20 micrograms per deciliter or greater.

(b) When abatement is required under subsection (a) of this section, the owner or managing agent shall submit a written lead poisoning hazard abatement plan to the Department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan prior to initiating abatement. The lead

poisoning hazard abatement plan shall comply with subsections (g), (h), and (i) of this section.

(c) If the abatement plan submitted fails to meet the requirements of this section, the Department shall issue an abatement order requiring submission of a modified abatement plan. The order shall indicate the modifications which shall be made to the abatement plan and the date by which the plan as modified shall be submitted to the Department.

(d) If the owner or managing agent does not submit an abatement plan within 14 days, the Department shall issue an abatement order requiring submission of an abatement plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the Department and the occupants of the dates of abatement activities at least three days prior to the commencement of abatement activities.

(f) Abatement shall be completed within 60 days of the Department's approval of the abatement plan. If the abatement activities are not completed within 60 days as required, the Department shall issue an order requiring completion of abatement activities. An owner or managing agent may apply to the Department for an extension of the deadline for abatement. The Department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) The following methods of abatement of lead poisoning hazards in paint are prohibited:

(1) Stripping paint on-site with methylene chloride-based solutions;
(2) Torch or flame burning;
(3) Heating paint with a heat gun above 1,100 degrees Fahrenheit;
(4) Covering with new paint or wallpaper unless all readily accessible lead-based paint has been removed;
(5) Uncontrolled abrasive blasting; or
(6) Uncontrolled waterblasting.

(h) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, State, and local laws and rules.

(i) All abatement plans shall require that the lead poisoning hazards be reduced to below the following levels:

(1) Floor lead dust levels are less than 100 micrograms per square foot;
(2) Windowsill lead dust levels are less than 500 micrograms per square foot;
(3) Window trough lead dust levels are less than 800 micrograms per square foot;
(4) Soil lead levels are less than 400 parts per million or such other level higher than 400 parts per million as determined by the Department to prevent a hazard in light of the condition and use of the land and in light of other relevant factors; and
(5) Drinking water lead levels less than 15 parts per billion.

(j) The Department shall verify by visual inspection that the approved abatement plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement. Compliance with the maintenance standard shall be deemed equivalent to meeting the abatement plan requirements as long as exterior surfaces are also addressed.

(k) Removal of children from the dwelling, school, or day care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or day care facility.

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

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under G.S. 130A-131.7(10) provided the owner has repeated the steps provided for in the maintenance standard annually during such occupancy; or (ii) if the owner is able to show that the unit was lead-safe during the period when the injuries were sustained.

"§ 130A-131.9E. Certificate of evidence of compliance.

An owner of a unit who has complied with the maintenance standard may apply annually to the Department for and upon presentation of acceptable proof of compliance shall be provided by the Department a certificate evidencing such compliance. The owner shall be entitled to the liability relief provided for in G.S. 130A-131.9D upon obtaining such certificate or certificates, or other satisfactory documentation that the maintenance standard has been complied with.

"§ 130A-131.9F. Discrimination in financing.

(a) No bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property or the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential dwelling unit provided that the owner is in compliance with the maintenance standard.

(b) Nothing in this section shall (i) require a financial institution to extend a loan or otherwise provide financial assistance if it is clearly evident that health-related issues, other than those related to lead-based paint, make occupancy of the housing accommodation an imminent threat to the health or safety of the occupant, or (ii) be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

(c) Failure to meet the maintenance standard shall not be deemed a default under existing mortgages."

Section 2. The Department shall adopt rules under Chapter 150B of the General Statutes to implement this act.

Section 3. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of two hundred thirty seven thousand seventy-nine dollars ($237,079) for the 1997-98 fiscal year and

the sum of two hundred ten thousand eight hundred seventy-nine dollars ($210,879) for the 1998-99 fiscal year to carry out the purposes of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 806
Proposed Committee Substitute S806-PCS6643

Short Title: Childhood Lead Exposure Control. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE CONTROL OF LEAD EXPOSURE OF CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. Part 4 of Article 5 of Chapter 130A of the General Statutes is amended by adding the following new sections to read:

"**§ 130A-131.7. Definitions.**

As used in this Part, unless the context requires otherwise, the term:

(1) 'Abatement' means the elimination or control of lead poisoning hazards by methods approved by the Department.

(2) 'Confirmed lead poisoning' means a blood lead concentration of 20 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.

(3) 'Day care facility' means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the needs of children under 6 years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(4) 'Department' means the Department of Environment, Health, and Natural Resources or its authorized agent.

(5) 'Dwelling', 'Dwelling unit', or 'Residential housing unit' means a structure, all or part of which is designed or used for human habitation, including the common areas, the grounds, any

outbuildings, or other structures appurtenant to the dwelling, dwelling unit, or residential housing unit.

(6) 'Elevated blood lead level' means a blood lead concentration of 10 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.

(7) 'Lead poisoning hazard' means the presence of readily accessible or mouthable lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence or 0.5 percent or greater by chemical analysis; or 15 parts per billion or greater in drinking water; or 100 micrograms per square foot or greater for dust on floors; or 500 micrograms per square foot or greater for dust on window sills; or 800 micrograms per square foot or greater for dust in window troughs, or soil lead concentrations in an amount greater than or equal to 400 parts per million that is determined by the Department to present a hazard in light of (i) the condition and use of the land and (ii) other relevant factors.

(8) 'Lead-safe housing' is housing that was built since 1978 or that has been tested by a person that has been certified by the Department to perform such testing and either found to have no lead-based paint hazards within the meaning of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 14 U.S.C. § 485(b)(15), or found to meet the requirements of the maintenance standard.

(9) 'Managing agent' means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(10) 'Maintenance standard' means the following:

a. Repairing and repainting areas of deteriorated paint inside a residential housing unit;

b. Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;

c. Adjusting doors and windows to minimize friction or impact on surfaces;

d. Subject to the occupant's approval, appropriately cleaning any carpets;

e. Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and

f. Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.

(11) 'Mouthable lead-bearing substance' means any substance on surfaces or fixtures five feet or less from the floor or ground that

form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are freestanding, containing lead-contaminated dust at a level that constitutes a lead poisoning hazard. Mouthable surfaces or fixtures include toys, vinyl miniblinds, doors, door jams, stairs, stair rails, windows, windowsills, and baseboards.

(12) 'Persistent elevated blood lead level' means a blood lead concentration of 15-19 micrograms per deciliter determined by the lowest of three consecutive blood tests. The first two blood tests shall be performed within a six-month period, and the third blood test shall be performed at least 12 weeks and not more than six months after the second blood test.

(13) 'Readily accessible lead-bearing substance' means any substance containing lead at a level that constitutes a lead poisoning hazard which can be ingested or inhaled by a child under 6 years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include soil, water, and paint that is chalking.

(14) 'Regularly visits' means presence at a dwelling, dwelling unit, school, or day care facility for at least two days a week for more than three hours per day.

(15) 'Supplemental address' means a dwelling, dwelling unit, school, or day care facility where a child with a persistent elevated blood lead level or a confirmed lead poisoning regularly visits or attends. Supplemental address also means a dwelling, school, or day care facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of a persistent elevated blood lead level or a confirmed lead poisoning.

"**§ 130A-131.8. Reports of blood levels in children.**

All laboratories doing business in this State shall report to the Department blood lead levels of one microgram per deciliter or greater for children less than 6 years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made within five working days after test completion on forms provided by the Department or on self-generated forms containing: the child's full name, date of birth, sex, race, address, and Medicaid number, if any; the name, address, and telephone number of the requesting health care provider; the name, address, and telephone number of the testing laboratory; the laboratory results, the specimen type -- venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. Such reports may be made by electronic submissions.

"**§ 130A-131.9. Examination and testing.**

When the Department has a reasonable suspicion that a child less than 6 years of age has a persistent elevated blood lead level or a confirmed lead poisoning, the Department shall require that child to be examined and tested within 30 days. The

Department shall require from the owner, managing agent, or tenant of the dwelling, dwelling unit, school, or day care facility information on each child who resides in, regularly visits, or attends, or, who has within the past six months, resided in, regularly visited, or attended the dwelling or facility. The information required shall include each child's name and date of birth, the names and addresses of each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department.

"§ 130A-131.9A. Investigation to identify lead poisoning hazards.

(a) When the Department learns of a persistent elevated blood lead level or a confirmed lead poisoning, the Department shall conduct an investigation to identify the lead poisoning hazards to children. The Department shall investigate the dwelling, dwelling unit, school, or day care facility where the child with the persistent elevated blood lead level or the confirmed lead poisoning resides, regularly visits, or attends. The Department shall also investigate the supplemental addresses of the child who has a persistent elevated blood lead level or a confirmed lead poisoning.

(b) The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit, school, or day care facility occupied, regularly visited, or attended by a child less than 6 years of age.

(c) In conducting an investigation, the Department may take samples of surface materials, or other materials suspected of containing lead, for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy or equivalent methods approved by the Department.

"§ 130A-131.9B. Notification.

Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the dwelling, dwelling unit, school, or day care facility and to all persons residing in or attending the dwelling or facility. The written notice to the owner or managing agent shall include a list of possible methods of abatement of the lead poisoning hazard.

"§ 130A-131.9C. Abatement.

(a) Upon determination that a child less than 6 years of age has a confirmed lead poisoning of 20 micrograms per deciliter or greater and that child resides in, attends, or regularly visits, a dwelling, dwelling unit, school, or day care facility containing lead poisoning hazards, the Department shall require abatement of the lead poisoning hazards. The Department shall also require the abatement of the lead poisoning hazards identified at the supplemental addresses of a child less than 6 years of age with a confirmed lead poisoning of 20 micrograms per deciliter or greater.

(b) When abatement is required under subsection (a) of this section, the owner or managing agent shall submit a written lead poisoning hazard abatement plan to the Department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan prior to initiating abatement. The lead

poisoning hazard abatement plan shall comply with subsections (g), (h), and (i) of this section.

(c) If the abatement plan submitted fails to meet the requirements of this section, the Department shall issue an abatement order requiring submission of a modified abatement plan. The order shall indicate the modifications which shall be made to the abatement plan and the date by which the plan as modified shall be submitted to the Department.

(d) If the owner or managing agent does not submit an abatement plan within 14 days, the Department shall issue an abatement order requiring submission of an abatement plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the Department and the occupants of the dates of abatement activities at least three days prior to the commencement of abatement activities.

(f) Abatement shall be completed within 60 days of the Department's approval of the abatement plan. If the abatement activities are not completed within 60 days as required, the Department shall issue an order requiring completion of abatement activities. An owner or managing agent may apply to the Department for an extension of the deadline for abatement. The Department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) The following methods of abatement of lead poisoning hazards in paint are prohibited:

(1) Stripping paint on-site with methylene chloride-based solutions;
(2) Torch or flame burning;
(3) Heating paint with a heat gun above 1,100 degrees Fahrenheit;
(4) Covering with new paint or wallpaper unless all readily accessible lead-based paint has been removed;
(5) Uncontrolled abrasive blasting; or
(6) Uncontrolled waterblasting.

(h) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, State, and local laws and rules.

(i) All abatement plans shall require that the lead poisoning hazards be reduced to below the following levels:

(1) Floor lead dust levels are less than 100 micrograms per square foot;
(2) Windowsill lead dust levels are less than 500 micrograms per square foot;
(3) Window trough lead dust levels are less than 800 micrograms per square foot;
(4) Soil lead levels are less than 400 parts per million or such other level higher than 400 parts per million as determined by the Department to prevent a hazard in light of the condition and use of the land and in light of other relevant factors; and
(5) Drinking water lead levels less than 15 parts per billion.

(j) The Department shall verify by visual inspection that the approved abatement plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement. Compliance with the maintenance standard shall be deemed equivalent to meeting the abatement plan requirements as long as exterior surfaces are also addressed.

(k) Removal of children from the dwelling, school, or day care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or day care facility.

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

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

"§ 130A-131.9E. Certificate of evidence of compliance.

An owner of a unit who has complied with the maintenance standard may apply annually to the Department for and upon presentation of acceptable proof of compliance shall be provided by the Department a certificate evidencing such compliance. The owner shall be entitled to the liability relief provided for in G.S. 130A-131.9D upon obtaining such certificate or certificates.

"§ 130A-131.9F. Discrimination in financing.

(a) No bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property or the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential housing unit provided that the owner is in compliance with the maintenance standard and has obtained a certificate of compliance under G.S. 130A-131.9E annually.

(b) Nothing in this section shall (i) require a financial institution to extend a loan or otherwise provide financial assistance if it is clearly evident that health-related issues, other than those related to lead-based paint, make occupancy of the housing accommodation an imminent threat to the health or safety of the occupant, or (ii) be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

(c) Failure to meet the maintenance standard shall not be deemed a default under existing mortgages.

"§ 130A-191.9G. Application fees for certificates of compliance.

The Department shall establish and collect an application fee for certificates of compliance. These fees shall be used to support the Childhood Lead Exposure

Control program in the Department. The application fee shall not exceed ten dollars ($10.00).

"**§ 130A-191.9H. Resident responsibilities.**

In any residential housing unit occupied by a child less than six years old who has an elevated blood lead level of 10 micrograms per deciliter or greater, the Department shall advise, in writing, the owner or managing agent and the child's parents or legal guardian as to the importance of carrying out routine cleaning activities in the units they occupy, own, or manage. Such cleaning activities shall include:

(1) Wiping clean all window sills with a damp cloth or sponge at least weekly;

(2) Regularly washing all surfaces accessible to children;

(3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of such conditions within 72 hours of discovery; and

(4) Identifying and understanding potential lead poisoning hazards in the environment of each child under the age of six in the unit (including toys, vinyl miniblinds, playground equipment, drinking water, soil, and painted surfaces), and taking steps to prevent children from ingesting lead such as encouraging children to wash their face and hands frequently and especially after playing outdoors."

Section 2. The Department shall adopt rules under Chapter 150B of the General Statutes to implement this act.

Section 3. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of two hundred thirty seven thousand seventy-nine dollars ($237,079) for the 1997-98 fiscal year and the sum of two hundred ten thousand eight hundred seventy-nine dollars ($210,879) for the 1998-99 fiscal year to carry out the purposes of this act.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 8 DATE _____

S. B. No. 806 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

~~Rep.~~)
) Jarvis
Sen.)

moves to amend the bill on page 6, line 41 ~~through~~ pg 7, line 2

( ) WHICH CHANGES THE TITLE

by deleting those lines,

SIGNED _____
Jeanne Lucas

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

April 16, 1997

MEMORANDUM

TO: Senator Jeanne H. Lucas, Chairperson, Senate Children & Human Resources Committee

FROM: Senator Richard Conder

RE: **Senate Bill 806 - Childhood Lead Exposure Control (Proposed Committee Substitute)**

Senate Bill 806 adds sections to Article 5 of Chapter 130A with provisions for controlling lead exposure of children. The committee substitute requires the reporting to the Department of Environment, Health and Natural Resources, by all laboratories doing business in the state, the blood lead levels of one microgram per deciliter or more for all children less than six (6) years of age. The Department is also required to obtain information on all children who reside, regularly visit, or attend a dwelling or facility in which a child less than six (6) years of age is found to have a persistent elevated blood lead level or confirmed lead poisoning.

The Department is further directed to conduct an investigation of any dwelling or facility in which a persistent elevated blood lead level or confirmed lead poisoning is found. The investigation shall include all supplemental addresses of such a child. The investigation is to determine whether or not a lead poisoning hazard exists.

Upon a determination by the Department that a lead poisoning hazard exists, the Department is required to give notice to the owner or managing agent of the dwelling, dwelling unit, school, or day care facility and to all persons residing in or attending the dwelling or facility. The notice shall include a list of possible methods of abatement of the lead poisoning hazard.

The Department shall also advise the parents or legal guardians of a child who has an elevated blood lead level of 10 micrograms per deciliter or greater as to the importance of carrying out routine cleaning activities in their housing unit. The Department would also advise the owner or managing agent.

Abatement Plan

If the Department finds that a child less than six (6) years of age has confirmed lead poisoning of twenty (20) micrograms per deciliter, and the child resides or attends a dwelling or facility containing a lead poisoning hazard, the Department shall require abatement of the lead poisoning hazard.

The procedure for establishing an abatement plan is set forth as follows:
1) The owner or managing agent shall submit a written abatement plan to the Department within fourteen (14) days of receipt of notice and shall obtain written approval of the plan prior to initiating abatement.
2) If the plan is not approved, the Department shall require a modified plan and shall indicate the modifications necessary for approval.
3) The owner or managing agent shall notify the Department and the occupants of the dates of abatement activities a minimum of three (3) days prior to commencement of the activities.
4) Abatement is to be completed within sixty (60) days of the Department's approval of the plan. An extension of thirty (30) days may be granted upon written request.

The committee substitute prohibits the abatement of lead poisoning hazards in paint through the following methods:

(1) stripping paint on-site with methylene chloride-based solutions
(2) torch or flame burning
(3) heating paint with a heat gun above 1,100 degrees Fahrenheit
(4) covering with new paint or wallpaper unless all readily accessible lead-based paint has been removed
(5) uncontrolled abrasive blasting
(6) uncontrolled waterblasting

Abatement plans are to reduce a lead poisoning hazard to below the following levels:
•Floor lead dust levels - 100 micrograms per square foot.
•Windowsill lead dust levels - 500 micrograms per square foot.
•Window trough lead dust levels - 800 micrograms per square foot.
•Soil lead levels - 400 parts per million or such other higher level as determined by the Department to prevent a hazard in light of the condition and use of the land and in light of other relevant factors.
•Drinking water lead levels - 15 parts per billion.

The committee substitute requires that all lead-containing waste and residue of the abatement of lead be removed and disposed of in accordance with applicable federal, State, and local laws and rules.

Maintenance Standard

The committee substitute defines a "maintenance standard" and provides that compliance with the maintenance standard shall be deemed equivalent to meeting the abatement plan requirements. The maintenance standard means the following:

(1) Repairing and repainting areas of deteriorated paint inside a residential housing unit;
(2) Cleaning the interior of the unit to remove dust that may contain hazardous amounts of lead as defined by the Department;
(3) Adjusting doors and windows to minimize friction or impact on surfaces;
(4) Subject to the occupant's approval, appropriately cleaning any carpets;
(5) Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and
(6) Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.

Effect of Compliance with Maintenance Standard

An owner of a unit complying with the maintenance standard may apply annually to the Department for a certificate of evidence of compliance. The Department shall establish and collect an application fee not to exceed ten (10) dollars for certificates of compliance which will be used to support the Childhood Lead Exposure Control program. The Department shall issue the certificate upon presentation of acceptable proof of compliance. Any owner of pre-1978 property who complies with the maintenance standard and obtains a certificate of compliance shall not be liable in any suit by a current or former occupant seeking damages for injuries arising from exposure to lead-based paint or lead-contaminated dust.

The committee substitute further provides that "[n]o bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property or the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential dwelling unit provided that the owner is in compliance with the maintenance standard and has obtained a certificate of compliance under G.S. 130A-131.9E."

A $237,079 appropriation for the 1997-98 fiscal year and $210,879 for the 1998-99 fiscal year is included in the committee substitute for the purposes of implementing this act.

Portions of this committee substitute covering laboratory reporting, testing and abatement are taken directly from the Administrative Code and are currently being implemented by the Department.

The act becomes effective October 1, 1997.

VISITOR REGISTRATION SHEET

Am

APPROPRIATIONS/Natural and Economic Resources 4/16/97

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Edgerton	DHR
Paula Wood.	Covenant with NC's Children
NELS ROSELAND	OSBM
Sonia Schmidt	NCJCDC
Deborah Ross	ACLU
Pam Seaman	United Way of NC

Senate Committee on Children & Human Resources
Minutes of Tuesday, April 22 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Tuesesday, April 22, 1997 in Room 423 of the State Legislative Office Building.

Fourteen (14) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting to order.

Senate Bill 1015 entitled Welfare Reform Act of 1997, was presented by its sponsor, Senator Martin of Guilford. This was a special meeting to discuss SB 1015 only. Senator Martin explained the bill. The remainder of the meeting time was spent with question and answers by staff and Senator Martin.

The business being completed, the meeting was adjourned. The next scheduled meeting will be on Wednesday April 23, 1997, at 11AM in room 544. LOB.

Bernadette David-Yerumo
Committee Clerk

Jeanne H. Lucas
Senator Jeanne H. Lucas
Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1015

Short Title: Welfare Reform Act of 1997. (Public)

Sponsors: Senators Martin of Guilford; Cooper, Dannelly, Gulley, Kerr, Lucas, Phillips, and Wellons.

Referred to: Children and Human Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE WELFARE REFORM ACT OF 1997.

The General Assembly of North Carolina enacts:

PART 1. WORK FIRST PROGRAM.

Section 1. The title of Part 2 of Article 2 of Chapter 108A of the General Statutes reads as rewritten:

"Part 2. ~~Aid to Families with Dependent Children.~~ Work First Program."

Section 2. G.S. 108A-24 reads as rewritten:

"**§ 108A-24. Definitions.**

As used in Chapter 108A:

(1) 'Applicant' is any person who requests assistance or on whose behalf assistance is requested.

(1a) 'County department of social services' means a county department of social services, consolidated human services agency, or other local agency designated to administer or provide services pursuant to this Article.

(2) 'Department' is the Department of Human Resources, unless the context clearly indicates otherwise.

~~(3) 'Dependent child' is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care;~~

~~it shall also include a minor who has been eligible for AFDC who is now living in a foster care facility or child caring institution; it shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.~~

(3a) 'Family' consists of a minor child or children and one or more of their natural parents, adoptive parents, or stepparents living together.

(3b) 'Federal TANF funds' means the Temporary Assistance for Needy Families block grant funds provided for in Title IV-A of the Social Security Act.

(4) Repealed by Session Laws 1983, c. 14, s. 3.

(5) 'Recipient' is a person to whom, or on whose behalf, assistance is granted under this Article.

(6) 'Resident,' unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.

(7) 'Secretary' is the Secretary of Human Resources, unless the context clearly indicates otherwise.

(8) 'State Plan' is the plan prepared by the Department for the State's Work First Program pursuant to this Article.

(9) 'Title IV-A' means the Social Security Act, 42 U.S.C. § 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and to other provisions of federal law as may apply to services provided in this Article.

(10) 'Work activities' shall include 'federal work activities' and 'State work activities'.

a. 'Federal work activities' are those activities that count toward the State's fulfillment of the work participation rate required by Title IV-A.

b. 'State work activities' are other activities authorized by the Department for receipt of Work First Family Assistance.

(11) 'Work First' is the temporary assistance to needy families program established in this Article.

(12) 'Work First Diversion Assistance' is a short-term cash payment that is intended to produce a substantial reduction in the likelihood of a family requiring Work First Family Assistance.

(13) 'Work First Family Assistance' is a program of time-limited periodic cash payments to assist in maintaining the children of eligible families while the adult family members engage in activities to prepare for entering and to enter the workplace.

(14) 'Work First Services' are services funded from appropriations made pursuant to this Article and designed to facilitate the purposes of the Work First Program. These services may include eligibility determination, child care, transportation, substance abuse treatment and counseling, education, job placement assistance, employment counseling, prevention of out-of-wedlock births, case management, emergency cash assistance, and other activities designed to help families become self-sufficient."

Section 3. G.S. 108A-25(a) reads as rewritten:

"(a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services or the Department of Human Resources under federal regulations or under rules ~~and regulations~~ adopted by the Social Services Commission or the Department of Human Resources and under the supervision of the Department of Human Resources:

(1) ~~Aid to families with dependent children;~~ Work First Program;
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program."

Section 4. G.S. 108A-27 reads as rewritten:

"**§ 108A-27. Authorization of ~~Aid to Families with Dependent Children Program.~~ Work First Program.**

~~The~~ (a) The Department ~~is authorized to~~ shall establish and supervise ~~an Aid to Families with Dependent Children Program.~~ the Work First Program to provide temporary assistance to eligible children and families. This program ~~is to~~ shall be administered by county departments of social services ~~under federal regulations and rules and regulations of the Social Services Commission.~~ in accordance with:

(1) This Article;
(2) The State Plan as defined in G.S. 108A-27.2; and
(3) Rules adopted pursuant to this Article by the Department or the Social Services Commission.

(b) The Department shall ensure that the Work First Program is established, supervised, and administered in compliance with federal law. The Department shall maximize federal receipts for the Work First Program.

(c) Whenever feasible, the Department shall ensure that as persons and families are moved to self-sufficiency, assistance shall be reduced and ended on a graduated basis rather than ending abruptly upon reaching the time limits established in State law for receiving assistance."

Section 5. Part 2 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections:

"**§ 108A-27.1. Assistance not an entitlement; State time limit on cash assistance.**

(a) Any assistance programs established under this Article are not entitlements, and nothing in this Article shall create any property right.

(b) Unless an extension or an exemption is provided pursuant to the provisions of the State Plan, any cash assistance under this Article that is provided to a person or a family in the employment program shall only be provided for a cumulative total of 24 months. After having received cash assistance for 24 months, the person or the family may reapply for cash assistance, but not until after 36 months from the last month the person or the family received cash assistance. This subsection does not apply to child-only cases.

"**§ 108A-27.2. Purpose; program description.**

(a) The purpose of the Work First Program is to provide short-term assistance in the form of cash and services to help persons and families move from public assistance to self-sufficiency through gainful employment.

(b) The Work First Program shall include program administration and three categories of assistance to participants:

(1) Work First Family Assistance;

(2) Work First Diversion Assistance; and

(3) Work First Services.

(c) Work First Family Assistance may be paid to eligible families or as 'child-only' benefits, as established in the State Plan, based on availability of funds, State and federal law, and Work First Program objectives.

(d) The Department may distinguish among potential groups of recipients on whatever basis necessary to enhance program purposes and to maximize federal revenues so long as the rights, including the constitutional rights of equal protection and due process, of individuals are protected. The Department may, however, deny benefits to legal immigrants only to the extent benefits are denied by federal law.

"**§ 108A-27.3. Duties of Department.**

(a) The Department shall supervise the Work First Program. In supervising the Work First Program, the Department shall have the following duties:

(1) Prepare the State Plan in accordance with G.S. 108A-27.5 to submit to the General Assembly each fiscal year;

(2) Prepare and submit the State Plan to the Governor for signature, approval, and forwarding to federal officials as required by federal law or regulation;

(3) Establish the requirements for content and a schedule for submission by counties of local block grant plans for Work First and review and approve the block grant plans submitted by the counties;

(4) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;

(5) Supervise disbursement of local block grant funds to counties for Work First Diversion Assistance and Work First Services;

(6) Make payments of Work First Family Assistance and Work First Diversion Assistance;

(7) Establish outcome and performance goals based on economic factors and conditions for determining the performance of State

and county agencies in the Work First Program and considering the well-being of children;

(8) Enter into Memoranda of Agreement with the county departments of social services in accordance with G.S. 108A-27.11;

(9) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;

(10) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program;

(11) Monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Program on the economic security and health of children and families, child abuse and neglect, school attendance, and academic and behavioral performance; and

(12) Monitor the performance of counties in the Work First Program.

(b) The Secretary may adopt temporary rules in accordance with the procedures of G.S. 150B-21.1 in order to:

(1) Implement provisions of the State Plan;

(2) Maximize federal revenues to prevent the loss of federal funds;

(3) Reduce State and county expenditures in current budgets;

(4) Enhance the ability of the Department to prevent fraud and abuse in the Work First Program;

(5) Modify the State Plan as necessary to meet changed circumstances after approval of the State Plan; and

(6) Respond to any of the circumstances enumerated in G.S. 150B-21.1.

(c) The Social Services Commission may adopt rules when necessary to implement the provisions of this Article.

(d) The Secretary may adopt rules when necessary to implement the provisions of the State Plan.

(e) The Secretary may delegate any portion of the Secretary's rule-making authority under this Article to the Social Services Commission.

"§ 108A-27.4. Duties of county departments of social services.

(a) Except as otherwise provided in this Article, the Work First Program shall be administered by the county departments of social services. The county departments of social services shall:

(1) Determine eligibility of persons and families for the Work First Program;

(2) Enter into Personal Responsibility Contracts with participants pursuant to the State Plan and ensure that the services and resources that are needed to assist participants to comply with their obligations under their Personal Responsibility Contracts are available;

(3) Comply with State and federal law relating to Work First and Title IV-A;

(4) Develop the local block grant plans for submission by the counties to the Department;

(5) Enter into and comply with Memoranda of Agreement in accordance with G.S. 108A-27.11;

(6) Ensure that participants engage in the minimum hours of work activities required by the State Plan and Title IV-A; and

(7) Ensure that the components of the Work First Program are funded solely from authorized sources and that federal TANF funds are used only for purposes and programs authorized by federal and State law.

(b) With prior approval of the Department, a county department of social services may delegate any of its duties under this Article to another public agency or private contractor. Prior to delegating any duty, a county department of social services shall submit its proposed delegation to the Department as the Department may provide. Notwithstanding any delegation of duty, a county department of social services shall remain accountable for its duties under the Work First Program.

"**§ 108A-27.5. State Plan.**

(a) The Department shall prepare and submit to the General Assembly for its review and approval every fiscal year, in accordance with the procedures established in G.S. 143-16.1 for federal block grant funds, a State Plan that proposes the terms of the Work First Program. Prior to submitting a State Plan to the General Assembly, the Department shall consult with local governments and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from them. The State Plan shall include:

(1) Benefit levels, limitations, and payments and the method for calculating benefit levels and payments;

(2) Eligibility criteria, including asset and income standards;

(3) A description of eligible federal and State work activities and work activity requirements for recipients and any exceptions or exemptions proposed to those requirements;

(4) Provisions for when extensions may be granted to a person or family who reaches the time limit for receipt of benefits;

(5) Requirements for assignment of child support income and compliance with child support enforcement activities;

(6) Provisions for exceptions and exemptions to criteria, time limits, and standards;

(7) Provisions for sanctions for recipient failure to comply with program requirements;

(8) Terms and conditions for repayment of Work First Diversion Assistance by recipients who subsequently receive Work First Family Assistance;

(9) Allocations of federal, State, and county funds for the Work First Program, including block grants to the counties for Work First Diversion Assistance and Work First Services;
(10) Levels of State and county funding for the Work First Program;
(11) Allocation for funding for administration at the State and local level not to exceed the federally established limitations on use of federal TANF funds for program administration;
(12) A description of the Department's consultation with local governments and private sector organizations and a summary of any comments received during the 45-day public comment period; and
(13) Anything required by federal law to be included in the State Plan.

(b) In addition to those items required to be included pursuant to subsection (a) of this section, the State Plan may include proposals to establish the following:
(1) Demonstration projects in one or more counties to assess the value of any proposed changes in State policy or to test ways to improve programs;
(2) Individual Development Accounts as authorized by Title IV-A;
(3) Automatic Medicaid eligibility or Medicaid benefit expansion for Work First Program participants;
(4) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform.

(c) The State Plan may provide that in cases where benefits are paid only for a child, the case is considered a family case.

(d) The State Plan may provide that recipients shall be required to enter into and comply with Personal Responsibility Contracts as a condition of receiving benefits. If provided for in the State Plan, the terms and conditions of Personal Responsibility Contracts shall be consistent with program purposes, federal law, and availability of funds.

"§ 108A-27.6. Work First Family Assistance; program changes.

The Department may change the Work First Family Assistance Program when required to comply with federal law. Any changes in federal law that necessitate a change in the Work First Program shall be effected by temporary rule until the next State Plan is approved by the General Assembly. Any change effected by the Department to comply with federal law shall be included in the State Plan submitted during the next session of the General Assembly following the change.

"§ 108A-27.7. Exemption from federal limitations for individuals convicted of certain drug-related felonies.

Individuals described in section 115 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 and convicted of a Category E,

F, G, H, or I controlled substances felony offense after August 22, 1996, shall be eligible for both Work First and the food stamp program in this State six-months after the individual is released from custody, if the individual has committed no additional criminal controlled substances offenses during the six-month period and has participated in and successfully completed any substance abuse treatment or counseling program determined by the county department of social services to be needed or appropriate. A county department of social services may, and is encouraged to, where appropriate, require substance abuse treatment as a condition for receiving benefits.

"§ 108A-27.8. Work First Program funding.

(a) The Department shall provide in its State Plan a formula for determining the amount of local block grants.

(b) Counties shall be reimbursed for Work First Family Assistance by the Department, subject to the availability of federal, State, and county funds and appropriations by the General Assembly.

(c) Work First Diversion Assistance and Work First Services shall be funded through federal funds, county funds, and the county block grant from the State pursuant to the State Plan.

"§ 108A-27.9. Maintenance of effort.

(a) Counties shall maintain one hundred percent (100%) maintenance of effort, as defined in the State Plan or by rule, in funding the Work First Program. Maintenance of effort shall be measured with reference to a base year defined in the State Plan.

(b) The Department shall define in the State Plan or by rule the term 'maintenance of effort' based on that term as defined in Title IV-A and shall provide to counties a list of activities that qualify for maintenance of effort requirements.

(c) If a county fails to comply with the maintenance of effort requirement in subsection (a) of this section, the Director of the Budget may withhold State moneys appropriated to the county pursuant to G.S. 108A-93.

"§ 108A-27.10. County block grants; Memoranda of Agreement.

(a) Each county shall submit annually to the Department for approval a local block grant plan that describes the Work First Diversion Assistance and Work First Services the county proposes to offer.

(b) Prior to submitting its local block grant plan to the Department, a county shall provide the public with an opportunity to review and comment upon its local block grant plan.

(c) A county local block grant plan shall include a description of how the county will:

(1) Utilize both public and private resources to assist in moving persons and families to self-sufficiency; and

(2) Address the needs of persons and families in areas specified by the Department, including transportation, housing, child care, and skills training.

(d) The local block grant plan shall also include a description of the county's priorities for serving families who need child care based on the needs of the community and the availability of services and funding.

(e) The local block grant plan shall be adopted by the county commissioners prior to its submission to the State.

(f) After the county submits its local block grant plan to the Department, the Department and the county shall agree upon the block grant plan by entering into a Memorandum of Agreement (MOA). The MOA shall include:

(1) The amount and any limitations or conditions on the use of funds under the local block grant, including disposition of any remaining funds at the end of the fiscal year;

(2) Outcome measures for determining the success of the Work First Program at the county level; and

(3) Any provision necessary to ensure proper operation of the Work First Program pursuant to federal law and to this Article.

In addition, the MOA may provide for Department accreditation of county programs, Departmental technical assistance to counties, and for other monitoring and performance enhancement techniques.

"**§ 108A-27.11. Performance standards; corrective action.**

(a) The Department shall establish acceptable levels of performance by counties in meeting Work First expectations, measured by outcome and performance goals contained in the State Plan or in the MOA. Economic factors and conditions and the well-being of children shall be considered in establishing the goals.

(b) The Department shall establish monitoring mechanisms and reporting requirements to measure the goals.

(c) When a county fails to meet acceptable levels of performance, the Department may take one or more of the following actions to assist the county in meeting its Work First goals:

(1) Notify the county of the deficiencies and add additional monitoring and reporting requirements.

(2) Require the county to develop and submit for approval by the Department a corrective action plan.

If a county fails to meet acceptable levels of performance for two consecutive years, or fails to comply with a corrective action plan developed pursuant to this section, the Department may assume control of the county's Work First Program, appoint an administrator to administer the county's Work First Program, and exercise the powers assumed to administer the Work First Program either directly or through contract with private or public agencies. County funding shall continue at levels established by the State Plan when the State has assumed control of a county Work First Program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the Work First Program.

"**§ 108A-27.12. Appeals.**

The Work First Program is a program of public assistance for purpose of an appeal under G.S. 108A-79."

Section 6. G.S. 108A-29 reads as rewritten:

"**§ 108A-29. ~~Limitations on eligibility.~~ Preference for employment services.**

~~(a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for Aid to Families with Dependent Children in order to be in compliance with federal regulations, but such rules shall not be more restrictive than the work requirements applicable to the Job Opportunities and Basic Skills Training Program provided for in G.S. 108A-30.~~

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for ~~Aid to Families with Dependent Children assistance,~~ Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining ~~manpower~~ employment services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

(c) [Repealed.]"

Section 6.1. G.S. 108A-35 reads as rewritten:

"**§ 108A-35. Removal to another county.**

Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. ~~The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which the recipient has moved shall pay such assistance.~~"

Section 7. G.S. 108A-38 reads as rewritten:

"**§ 108A-38. Protective and vendor payments.**

~~Instead of the use of personal representatives provided for by G.S. 108A-37, when~~ When necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission or the Department, which rules and regulations shall be subject to applicable federal laws and regulations."

Section 8. G.S. 108A-49(a) reads as rewritten:

"(a) Benefits in the form of foster care assistance shall be granted in accordance with the rules and regulations of the Social Services Commission to any dependent child who ~~is~~ would have been eligible to receive ~~AFDC~~ Aid to Families with Dependent Children (as that program was in effect on June 1, 1995), but for his or her removal from the home of a specified relative for placement in a foster care

facility; provided, that the child's placement and care is the responsibility of a county department of social services."

Section 9. G.S. 108A-58 reads as rewritten:

"**§ 108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.**

(a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within one year prior to the date of applying for medical assistance benefits, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest ~~therein, either by himself or through his legal representative,~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits ~~thereafter~~ as set forth in subsection (c) of this section.

Countable real and personal property includes real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest ~~therein,~~ in real or personal property, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for medical assistance benefits unless the person, or ~~his~~ the person's legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person ~~who, by himself or through his legal representative,~~ who sells, gives, assigns or transfers real or personal property or an interest ~~therein~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, ~~shall~~ shall, after the time of transfer, be ineligible to receive these benefits ~~thereafter~~ until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for ~~his~~ the person's maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

(1) For uncompensated value of at least one thousand dollars ($1,000) but not more than six thousand dollars ($6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;

(2) For uncompensated value of more than six thousand dollars ($6,000) but not more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;

(3) For uncompensated value of more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar ($500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars ($12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment of transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or ~~his~~ the person's legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving medical assistance or within one year of the date of an application for medical assistance, unless some other time period is mandated by controlling federal law, the uncompensated value, for the purposes of subsection (c), shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c).

(h) This section shall not apply to applicants for or recipients of ~~aid to families with dependent children~~ Work First Family Assistance or to persons entitled to medical assistance by virtue of their eligibility for ~~aid to families with dependent children.~~ Work First Family Assistance.

(i) This section shall apply only to transfers made before July 1, 1988."

Section 10. G.S. 108A-80 reads as rewritten:

"**§ 108A-80. Confidentiality of records.**

(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and ~~regulations and~~ regulations, and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of ~~Aid To Families with Dependent Children~~ Work First Family Assistance and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a Class 1 misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission shall have the authority to adopt rules and regulations governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Human Resources shall have the authority to adopt rules and regulations governing access to medical assistance case files."

Section 11. G.S. 108A-28, 108A-28.1, 108A-30, 108A-31, 108A-32, 108A-33, 108A-34, and 108A-39.1 are repealed.

PART 2. STATUTORY TECHNICAL AND CONFORMING CHANGES.

Section 12. G.S. 1-110(a) reads as rewritten:

"(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

(1) Receives food stamps.
(2) Receives ~~Aid to Families with Dependent Children (AFDC).~~ Work First Family Assistance.
(3) Receives Supplemental Security Income (SSI).
(4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
(5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
(6) Is seeking to obtain a domestic violence protective order pursuant to G.S. 50B-2.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

Section 13. G.S. 15-155.1 reads as rewritten:

"**§ 15-155.1. Reports to district attorneys of aid to dependent children and ~~illegitimate~~ out-of-wedlock births.**

The Department of Human Resources, by and through the Secretary of Human Resources, shall promptly after June 19, 1959, make a report to each district attorney, setting out the names and addresses of all mothers who reside in his prosecutorial district as defined in G.S. 7A-60 and are recipients of ~~aid to dependent children~~ assistance under the provisions of Part 2, Article 2, Chapter 108A of the General Statutes. Such report shall in some manner show the identity of the unwed mothers and shall set forth the number of children born to each said mother. Such a report shall also be made monthly thereafter setting out the names and addresses of all such mothers who reside in the district and who may have become recipients of aid to dependent children since the date of the last report."

Section 14. G.S. 15-155.2(a) reads as rewritten:

"(a) Upon receipt of such reports as are provided for in G.S. 15-155.1, the district attorney of superior court may make an investigation to determine whether the mother of an ~~illegitimate~~ out-of-wedlock child or who is a recipient of ~~aid to a dependent child or children,~~ Work First Family Assistance, has abandoned, is willfully neglecting or is refusing to support and maintain the child within the meaning of G.S. 14-326 or 49-2 or is diverting any part of the funds received as ~~aid to a dependent child~~ Work First Family Assistance to any purpose other than for the support and maintenance of ~~such dependent~~ a child in violation of G.S. 108-76.1. In making this investigation the district attorney is authorized to call upon:

(1) Any county board of social services or the Department of Human Resources for personal, clerical or investigative assistance and for access to any records kept by either such board and relating to the

matter under investigation and such boards are hereby directed to assist in all investigations hereunder and to furnish all records relating thereto when so requested by the district attorney;

(2) The board of county commissioners of any county within his district for legal or clerical assistance in making any investigation or investigations in such county and such boards are hereby authorized to furnish such assistance in their discretion; and

(3) The district attorney of any inferior court in his district for personal assistance in making any investigation or investigations in the county in which the court is located and any district attorney so called upon is hereby authorized to furnish such assistance by and with the consent of the board of county commissioners of the county in which the court is located, which board shall provide and fix his compensation for assistance furnished."

Section 15. G.S. 95-25.3(d) reads as rewritten:

"(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."

Section 16. G.S. 105A-2(1) reads as rewritten:

"(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,~~ Work First Program provided in Part 2 of Article 2 of Chapter 108A, 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."

Section 17. G.S. 110-129(6) reads as rewritten:

"(6) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, ~~Aid for Dependent Children,~~ Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means 'wage' as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 18. G.S. 110-130.1 reads as rewritten:

"**§ 110-130.1. ~~Non-AFDC~~ Non-Work First services.**

(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).

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to

have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for ~~non-AFDC~~ non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

Section 19. G.S. 111-21 reads as rewritten:

"**§ 111-21. Disqualifications for relief.**

No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing ~~aid for dependent children~~ Work First Family Assistance and/or relief for the aged, and/or aid for the permanently and totally disabled."

Section 20. G.S. 120-70.71 reads as rewritten:

"**§ 120-70.71. Powers and duties.**

The Commission shall study State government policy and programs affecting the family, specifically addressing family issues from the point of existing laws, governmental programs needed or already functioning, and current family life issues. The Commission shall work in close collaboration with various agencies and programs dealing with the family. Among the issues the Commission may consider studying are the following:

(1) The feasibility of establishing model projects that would be located primarily in low-income, high dropout rate communities in North Carolina:
   a. To teach adults in the family to read; and
   b. To provide after school care for school-aged children using volunteers who could be retirees in the provision of services;

(2) The fiscal impact of a cash stipend created by a tax deduction or by industry dollars to promote literacy or the obtainment of a General Education Development Degree for persons who are presently illiterate or outside the school system;

(3) The need for day care for children and senior citizens, ~~an increase in Aid to Families with Dependent Children~~ changes in Work First Family Assistance payments and eligibility requirements, coordination of State law with federal welfare reform programs, in-home services for the elderly, additional funding for adult day care, and incentives for industries to develop day care programs;

(4) The relationship between the decline of real income and the tax structure, college tax credits, the minimum wage, and welfare support systems;

(5) The State's efforts in the areas of adolescent pregnancy and teaching about adolescent sexuality;

(6) A comprehensive review of State and federal programs encouraging business and industry to provide adequate child care for their employees;

(7) An analysis of what the State is currently doing to encourage North Carolina businesses and industry to provide adequate child care for their employees;

(8) A survey of North Carolina employers that presently provide child care options for their employees and what types of options they provide;

(9) A comprehensive study of the types of tax incentives and other incentives that would encourage North Carolina businesses -- especially those that have 50 or more employees -- to either provide on-site child care facilities or provide other child care options and the cost to the State of these tax incentives;

(10) Recommendations of what the State could be doing to encourage North Carolina businesses to provide on-site child care facilities or other child care options for their employees;

(11) Recommendations of a comprehensive policy for North Carolina to encourage businesses within the State to provide on-site child care facilities or other child care options for their employees;

(12) The concept of requiring coverage of child health supervision services in all health insurance policies sold or delivered within the State;

(13) The issue of domestic violence; and

(14) The problem of suicide among the youth of the State."

Section 21. The Department shall expand the amount of time a Work First Program participant who becomes employed may receive Medicaid benefits from 12 to 24 months so long as the participant otherwise meets the income eligibility requirements for Medicaid.

Section 22. Notwithstanding any law to the contrary, the Department of Human Resources may designate a pilot county for the purpose of conducting a demonstration work-study project for Work First Program participants in the county that will provide participants with the option to attend community college paid with

Work First funds while continuing to require the participants to meet work requirements. This pilot shall be funded by the pilot county using the federal and State funding allocated to the pilot county for the Work First Program. The Department shall evaluate the work-study project and report to the General Assembly on or before March 1, 1999.

Section 23. This act is effective when it becomes law.

James B. Hunt Jr.
Governor

State of North Carolina
Office of the Governor

For Release: IMMEDIATE
Date: April 8, 1997

Contact: Lynne Garrison/Lois Nilser
Phone: (919) 733-9190

State proposes sweeping plans to strengthen Work First

RALEIGH—The state is taking a major step to strengthen Work First, Gov. Jim Hunt's welfare reform initiative, by giving counties broader control and greater responsibility for how they run their welfare programs. The state plan, which also devises new ways to help welfare families succeed in the workplace, will be presented to the General Assembly this week.

"This is a watershed moment for welfare reform," Hunt said. "Work First has already changed the face of welfare in North Carolina, decreasing the rolls by almost 20 percent and saving taxpayers $90 million. We're building on that success."

The state's blueprint calls for giving counties greater control and flexibility in deciding how to spend welfare funds to meet the needs of local welfare families. Private and nonprofit groups will be called on to advise counties on ways to help families stay off welfare. This grassroots effort will help counties understand the labor needs of area businesses and enlist community support to meet child care, transportation and other needs of families.

Counties will submit annual plans to the state detailing how they propose to run their Work First programs. All counties will be required to maintain spending at 1996-97 levels and keep the same core services, such as providing cash assistance, employment services, protecting children and requiring child support.

Along with their increased flexibility, counties will be held accountable for six goals: decreasing their welfare rolls, getting more welfare families into the work force, giving families employment services, ensuring families remain off welfare after going to work, collecting child support from absent parents and keeping more families from going on welfare in the first place.

Counties who don't perform well will be required to submit plans to the state detailing how they will improve, with the state having the option to take over their efforts. Similar accountability provisions are in place with public schools and local mental health agencies.

The Work First state plan is a 2-year blueprint that must be submitted to the federal government in response to federal welfare reform legislation passed last August. Upon approval by the General Assembly, the state plan will be forwarded to the U.S. Department of Health and Human Services.

The state plan is supported by a 5-year business plan describing how welfare funds will be spent and how savings will be reinvested to help families. Both the state plan and the business plan rely on legislation that Sen. Bill Martin is expected to introduce by early next week.

"Welfare reform is about effective family and child support. We must put our money in the right places so families can be strong enough to stand on their own feet. This is what's best for families, and for children," said Dr. David Bruton, Secretary of the N.C. Department of Human Resources.

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The plans call for reinvesting Work First savings to make work pay for welfare families:

- **Child care**: Much of the savings from declining welfare rolls will be reinvested in child care subsidies for welfare parents and for low-income families at risk of going on welfare. Savings also will be invested to expand Smart Start to make child care more accessible and raise the quality of care across the state.
- **Job bonus:** Families will be able to keep all of their cash benefits for three months after they get a job and earn income. After the first three months, their cash benefits will be calculated based on only 45 percent of their earned income, until the family earns too much to qualify for cash assistance (about $7,000 per year for a family of three. These families may continue to get food stamps, Medicaid, and child care subsidies.).
- **Transportation assistance:** Families often need help getting to work and their children to day care. Transportation assistance, which could come in the form of bus tokens or carpool, is extended for six months after the family is working and ineligible for cash assistance. Families will be better able to plan and save for reliable transportation.

Other reinvestment strategies focus on helping families be successful in the work place:

- **Substance abuse**: Welfare parents who abuse drugs or alcohol need help kicking their habit. The business plan and state plan call for early childhood services to make sure children are healthy and well cared for, and provide for substance abuse counselors to identify substance abusers and refer them for treatment.
- **Domestic violence**: The state is developing ways to identify welfare recipients who have a history of domestic violence, and may waive Work First requirements such as time limits or child support cooperation if it will help the recipient escape or recover from domestic violence.
- **Employee Assistance Program**: Work First participants may have difficulties that keep them from being successful in a job. The state is enhancing an employee assistance program to provide confidential counseling to Work First participants trying to make it in the work force.

Investments from Work First savings will also streamline the way welfare programs are conducted. A new computer system to replace the existing outdated and inflexible system will free up county staff to work closer with families. The new system will allow the state and counties to better detect fraud and evaluate the long-term impact of Work First on children and families.

Counties are encouraged to find other ways to help families, including contracting with a business or nonprofit to run their Work First programs. Churches and other religious groups can compete for these contracts.

The state plan was developed from recommendations by the Human Services Task Force—a group of legislators, county commissioners, county managers, social services directors, welfare parents, and religious, non-profit and business leaders—who gave advice on the best ways to use the increased flexibility in the federal welfare law.

"The state plan was created by folks who have a stake in helping families, who know welfare and how it affects families. This was not a top-down effort. The plan represents the thoughtful input of a lot of caring people. We asked them to be visionaries--and they delivered," said Dr. Bruton.

Many of the elements of Work First are tougher than the federal law and will remain in place, including work requirements, personal responsibility contracts, sanctions for families who don't meet their obligations, and a cap on family benefits for children born 10 months after a family goes on welfare.

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Welfare Reform Legislation Summary

The state's proposed welfare reform legislation will make Work First the foundation for implementing the new federal welfare reform law. The legislation recognizes and implements the federal shift to a block grant with a cap on federal spending.

The legislation replaces an entitlement program that provided benefits for an indefinite time with a temporary assistance program that focuses on moving families to self-sufficiency within a five-year lifetime limit on cash assistance.

Program provisions aim to help children, support families, and promote personal responsibility and self-sufficiency.

Following are key features of the legislation:

- Most able-bodied adult recipients are required to be working or in work-related activities within two years. There is a 60-month lifetime limit on cash benefits. (Work First continues to require work within 12 weeks for families in the employment program and ends benefits after two years. Families can then reapply for benefits after being off welfare for three years.)

- Welfare recipients must sign a personal responsibility contract that includes promises to care properly for their children, find a job, and comply with all Work First requirements.

- Work First continues to be state-supervised and county-administered, but with changes, such as increased county flexibility and accountability in spending welfare dollars.

- Each year, counties will be required to submit local block grant plans to the Department of Human Resources, detailing how they intend to use welfare dollars to meet Work First goals. Plans will be enforced through memorandums of agreement between DHR and the counties. DHR can take over county programs which are not effective.

- Welfare checks to families and diversion grants will be paid from federal funds, but support services such as transportation, counseling, etc., will be paid by counties from the block grants primarily funded by state and county appropriations.

- Counties will be required to maintain spending at 100 percent of 1996-97 levels, with no subsequent adjustments for inflation.

- The Department of Human Resources will annually submit for the General Assembly's approval a state plan which includes the bulk of program details (e.g., benefit levels, eligibility standards, and block grant allocations).

- The bill also amends state law to conform to new federal food stamp requirements. Child support enforcement changes to conform to new federal law will be offered in a separate bill.

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April 8, 1997

Strengthening Work First

In North Carolina, three guiding documents contain the state's direction for Work First, Governor Jim Hunt's welfare reform initiative that's putting people to work, cutting the welfare rolls and saving tax dollars.

Proposed Welfare Reform Legislation

The legislation sets the state's broad direction in strengthening Work First. It gives counties greater control and greater flexibility in deciding how to spend welfare funds. It also demands more accountability for how that money is spent.

The legislation calls for counties to submit annual plans telling the state how they will run their program and meet the state and federal performance goals. Counties receive their funds in a block grant. The state will have the option to take over ineffective county programs.

1997-99 State Plan for Work First

The state plan is required by the federal government to describe how North Carolina is carrying out welfare reform. It contains the details of the Work First program. Since January 1, 1997, North Carolina has operated under an interim state plan, based on Work First, that fills the federal requirements for the welfare block grant.

In April, Gov. Jim Hunt will submit to the legislature a comprehensive, two-year state plan taking advantage of increased federal flexibility. It incorporates recommendations of the Human Services Task Force--a group of legislators, county commissioners, county managers, social services directors, welfare parents, and religious, nonprofit and business leaders--who offered their advice on the best ways to use the increased flexibility in the federal welfare law.

The state plan specifies cash benefit levels, eligibility standards, and how county performance will be judged.

Work First Business Plan

The Business Plan is a five-year blueprint that shows how the state will use available funds to make Work First efficient and effective. It emphasizes the need to run Work First like a business, investing in child care and other support services necessary to help families be successful in the workplace. Investing savings from Work First into Smart Start will help make quality child care more affordable and more available for working families. The business plan calls for modernizing the computer system so county staff can better help families, cut red tape, and meet federal reporting requirements.

# # #

Work First State Plan Summary

Work First, Gov. Jim Hunt's welfare reform initiative, changed the face of welfare in North Carolina with tough work requirements, personal responsibility contracts, and incentives to help welfare families move into the work force. Now, with the new flexibility provided by federal welfare reform, the state is moving to strengthen and build on Work First's progress.

In October 1996, the state convened an 80-member Human Services Task Force—a group of legislators, county commissioners, county managers, social services directors, welfare parents, and religious, nonprofit and business leaders—to work on a far-reaching state plan for Work First.[1] The task force and its 14 work groups began intensive meetings, looking at issues ranging from child care to child support, accountability for helping families find work to creating job bonuses for families that go to work. Their goal was to strengthen personal responsibility and self-sufficiency.

The new proposed state plan, being presented in April to the General Assembly:

- Builds on the success and groundwork of Work First, Governor Jim Hunt's welfare-to-work initiative, which has helped reduce welfare rolls by almost 20 percent since it began. It continues all provisions of Work First, such as requiring work and personal responsibility.
- Describes a new county block grant system that increases local control over how welfare money is spent. After offering a core group of services, counties can determine the needs of their welfare families and spend funds accordingly. They must maintain their 1996-97 level of spending.
- Reinvests savings from Work First into child care, Smart Start, transportation services, substance abuse counseling, an employee assistance program, employer incentives such as wage subsidies, and other services to help families be self sufficient.
- Calls for broad community participation in the local planning process and encourages counties to consider contracting with nonprofits, including religious groups, to help families move to self-sufficiency.
- Rewards families moving from welfare to work with a three-month "job bonus" and simplifies eligibility and benefits for families."
- Spells out goals that counties must address in their block grant plans, including decreasing their welfare populations, diverting more families from going on welfare in the first place, and working to keep families self-sufficient after they leave welfare.
- Specifies how funds may be spent, and limits spending on administration to 15 percent of the total.
- Describes how Work First will be evaluated by an outside group, including the impact of welfare reform on children.
- Sets a statewide goal of a 4 percent reduction in out-of-wedlock births in two years.

Together with proposed changes in state law and with the Department of Human Resources' five-year "business plan," which highlights investments in child care and other family services from welfare savings, the state plan charts a new course for Work First. These changes require no new funding and will help lead to stronger families and a stronger North Carolina.

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[1] In Oct. 1996, North Carolina submitted an interim state plan based on Work First to U.S. Health and Human Services. The interim plan, which went into effect Jan. 1, allowed North Carolina to receive more funds than the state would have gotten under the old welfare rules.

North Carolina Work First Business Plan

Investing in North Carolina Families

As North Carolina works to help welfare families move to self-sufficiency with Work First, the N.C. Department of Human Resources has created a five-year blueprint for reaching Gov. Jim Hunt's goal of every able-bodied welfare recipient in a job or in job training by 2000.

This business plan recognizes that the state's welfare system must be run like a business—with clearly defined goals and strategies to meet those goals. It highlights the investments in families that will be needed to reach the Governor's goal and to ensure that families remain independent, closing the revolving door to welfare.

It highlights the upfront investment in child care necessary to help parents go to work. Transferring dollars from the federal welfare block grant, as Gov. Hunt has proposed, will free up state dollars to expand Smart Start. This allows those parts of the state not now participating in Smart Start time to plan improvements in child care quality and availability to meet the needs of working families.

Modernizing the state's public assistance computer systems at both the county and state level is critical so county staff can work more closely with families. Now, 4,000 county workers are almost exclusively devoted to manually determining families' eligibility for public assistance. Automating that job throughout the state will cut the red tape and give staff more time to help families move to self-sufficiency. An aggressive fraud prevention and recovery effort supports efforts to direct services to children and families.

Following are key highlights of the five-year business plan:

Smart Start: In 1997-98, $22.9 million of federal welfare block grant dollars is invested in child care subsidies. This frees up state money to expand Smart Start statewide. Through Smart Start, families will have better access to higher quality child care, improved preventive health care for their children, and other support services. By state law, communities must spend at least 30 percent of Smart Start dollars for financial help with child care expenses. The annual investment in Smart Start increases to $31.5 million in 1998-99 and remains at that level through 2001-02.

Child care: In 1997-98, an additional $3.8 million is provided to help pay for child care for families leaving welfare. That investment rises to $104.5 million by 2001-02.

Support services: Transportation, job training and other support services are built into the business plan at a rate of $1,500 per participant. An additional $500,000 a year is provided for joint community college/Work First training initiatives.

Substance abuse: The plan includes a new investment in substance abuse services of $1 million a year for five years so Work First participants with substance abuse problems can get the help they need and get back on their feet.

Child welfare/mental health: The plan maintains the state's investment in child welfare and mental health services at $104.6 million a year for five years. About 60 percent of those dollars support the protection of children at the county level, with the remainder going for mental health treatment and emergency grants for families.

Evaluation: The plan invests $700,000 a year for five years to evaluate the impact of Work First on families and children. It will look at issues such as how long welfare parents stay in jobs, how much they're paid, and the impact of welfare reform on child abuse and neglect.

County administration: The plan projects that county administrative costs will decline by 3 percent a year and state costs by 2 percent a year.

Automation: The plan invests $16.9 million in automation for 1997-98 and $62.8 million over the five-year period to improve efficiency and meet federal reporting requirements.

April 8, 1997

North Carolina General Assembly
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April 21, 1997
Memorandum
To: Senate Children and Human Resources Committee
From: Carolyn D. Johnson, Committee Counsel
Re: SB 1015 - Welfare Reform Act of 1997

Background

Federal welfare reform legislation (the Personal Responsibility and Work Opportunity Reconcilliation Act of 1996. P. L. 104-193) was signed into law last August. The legislation ended the Aid to Families With Dependent Children (AFDC) entitlement program, and created the Temporary Assistance for Needy Families (TANF) block grant program. The purpose of Senate Bill 1015 is to establish the Work First Program as the State's temporary assistance for needy families (TANF) program.

Bill Explanation

Part I establishes the Work First Program as the mechanism to provide temporary cash assistance or services designed to move recipients toward self-sufficiency through gainful employment. The program includes three categories of assistance: (1) Work First Family Assistance (cash assistance), (2) Work First Diversion Assistance (short-term loan assistance) and (3) Work First Services (support services such as child care, transportation, education, etc.). 108A-24, -27.2

The assistance provided is not deemed an entitlement and creates no property rights. Subject to applicable extensions or exemptions, cash assistance is limited to a cumulative total of 24 months and no additional cash assistance is available until 36 months after the last month assistance was received. The time limitations do not apply in child-only cases. 108A-27.1 DHR shall ensure, whenever feasible, that assistance is reduced and ended on a graduated basis rather than abruptly at the end of time limitations. 108A-27(c).

Program purposes and revenues may be enhanced by distinctions among recipient groups subject to equal protection and due process considerations. Legal immigrants are eligible for benefits to the extent allowed by federal law. 108A-27.2(d) Class E - I drug felons are eligible for Work First/Food Stamp benefits 6 months after release from custody if no additional drug offense has been committed and completion of required substance abuse treatment programs. 108A-27.7 Medicaid benefits of recipients, who become employed, shall be expanded to 24 months subject to other income eligibility requirements. Sec. 21

The county departments of social services, under DHR's supervision, shall administer the program in accordance with Article 2 of 108A, the State Plan and rules adopted by either DHR or the Social Services Commission. 108A-25, -27, -27.5 DHR shall prepare a State Plan for submission to the General Assembly, Governor and federal officials, establish eligibility criteria, benefit levels, work requirements and exemptions, and requirements for county block grants, including approval procedures, allocation determinations and performance measures. 108A-27.3, -27.5 The counties shall develop local block grant plans, determine recipient eligibility, enter into personal responsibility contracts with recipients, and ensure program compliance with the State Plan, and applicable State and federal law. 108A-27.4 The counties are required to maintain 100% maintenance of effort for program funding as determined by the base year specified in the State Plan. 108A-27.9 DHR and the counties shall enter into Memoranda of Agreement to implement county block grants. 108A-27.10

Part I also: (1) creates an employment services priority for Work First Family Assistance recipients,108A-29; (2) deletes requirement that transferring counties pay assistance for the first month after recipients move, 108A-35; and (3) amends statutory provisions pertaining to protective and vendor payments, 108A-38, foster care assistance, 108A-49, transfer of property for qualifying for medical assistance, 108A-58, and confidentiality of records, 108A-80. Section 11 repeals specified statutory provisions deemed necessary to conform with federal welfare reform requirements.

Part 2 amends specified statutory provisions to make technical and conforming changes generally deleting references to "Aid to Families with Dependent Children" or "AFDC" and substituting "Work First Family Assistance" or "Work First Program"

DHR may designate a pilot county to conduct a demonstration work-study project to give Work First Program participants the option to attend community college while continuing to meet work requirements. The pilot shall be funded and paid for from federal and state funds allocated to the pilot county for Work First. DHR shall evaluate such pilot and report the General Assembly on or before March 1, 1999.

The act becomes effective when it becomes law.

List of Repealed Statutes

108A-28. Eligibility requirements; certain contributions to be disregarded.
108A-28.1. Limitation on restrictions.
108A-30. Job Opportunities and Basic Skills Training Program adopted.
108A-31. Application for assistance.
108A-32. Investigation of applicant.
108A-33. Granting or denial of assistance.
108A-34. Reconsideration of public assistance.
108A-39.1. AFDC Emergency Assistance Program.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE DRS1759-LV044C(3.20)

Short Title: Welfare Reform Act of 1997. (Public)

Sponsors: Senator Martin of Guilford.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE WELFARE REFORM ACT OF 1997.

The General Assembly of North Carolina enacts:

PART 1. WORK FIRST PROGRAM.

Section 1. The title of Part 2 of Article 2 of Chapter 108A of the General Statutes reads as rewritten:

"Part 2. ~~Aid to Families with Dependent Children.~~ Work First Program."

Section 2. G.S. 108A-24 reads as rewritten:

"**§ 108A-24. Definitions.**

As used in Chapter 108A:

(1) 'Applicant' is any person who requests assistance or on whose behalf assistance is requested.

(1a) 'County department of social services' means a county department of social services, consolidated human services agency, or other local agency designated to administer or provide services pursuant to this Article.

(2) 'Department' is the Department of Human Resources, unless the context clearly indicates otherwise.

~~(3) 'Dependent child' is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care; it shall also include a minor who has been eligible for AFDC who is now living in a foster care facility or child caring institution; it~~

~~shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.~~

(3a) 'Family' consists of a minor child or children and one or more of their natural parents, adoptive parents, or stepparents living together.

(3b) 'Federal TANF funds' means the Temporary Assistance for Needy Families block grant funds provided for in Title IV-A of the Social Security Act.

(4) Repealed by Session Laws 1983, c. 14, s. 3.

(5) 'Recipient' is a person to whom, or on whose behalf, assistance is granted under this Article.

(6) 'Resident,' unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.

(7) 'Secretary' is the Secretary of Human Resources, unless the context clearly indicates otherwise.

(8) 'State Plan' is the plan prepared by the Department for the State's Work First Program pursuant to this Article.

(9) 'Title IV-A' means the Social Security Act, 42 U.S.C. § 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and to other provisions of federal law as may apply to services provided in this Article.

(10) 'Work activities' shall include 'federal work activities' and 'State work activities'.

a. 'Federal work activities' are those activities that count toward the State's fulfillment of the work participation rate required by Title IV-A.

b. 'State work activities' are other activities authorized by the Department for receipt of Work First Family Assistance.

(11) 'Work First' is the temporary assistance to needy families program established in this Article.

(12) 'Work First Diversion Assistance' is a short-term cash payment that is intended to produce a substantial reduction in the likelihood of a family requiring Work First Family Assistance.

(13) 'Work First Family Assistance' is a program of time-limited periodic cash payments to assist in maintaining the children of eligible families while the adult family members engage in activities to prepare for entering and to enter the workplace.

(14) 'Work First Services' are services funded from appropriations made pursuant to this Article and designed to facilitate the purposes of the Work First Program. These services may include

eligibility determination, child care, transportation, substance abuse treatment and counseling, education, job placement assistance, employment counseling, prevention of out-of-wedlock births, case management, emergency cash assistance, and other activities designed to help families become self-sufficient."

Section 3. G.S. 108A-25(a) reads as rewritten:

"(a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services or the Department of Human Resources under federal regulations or under rules ~~and regulations~~ adopted by the Social Services Commission or the Department of Human Resources and under the supervision of the Department of Human Resources:

(1) ~~Aid to families with dependent children;~~ Work First Program;
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program."

Section 4. G.S. 108A-27 reads as rewritten:

"**§ 108A-27. Authorization of ~~Aid to Families with Dependent Children Program.~~ Work First Program.**

~~The~~ (a) The Department ~~is authorized to~~ shall establish and supervise ~~an Aid to Families with Dependent Children Program.~~ the Work First Program to provide temporary assistance to eligible children and families. This program ~~is to~~ shall be administered by county departments of social services ~~under federal regulations and rules and regulations of the Social Services Commission.~~ in accordance with:

(1) This Article;
(2) The State Plan as defined in G.S. 108A-27.2; and
(3) Rules adopted pursuant to this Article by the Department or the Social Services Commission.

(b) The Department shall ensure that the Work First Program is established, supervised, and administered in compliance with federal law. The Department shall maximize federal receipts for the Work First Program.

(c) Whenever feasible, the Department shall ensure that as persons and families are moved to self-sufficiency, assistance shall be reduced and ended on a graduated basis rather than ending abruptly upon reaching the time limits established in State law for receiving assistance."

Section 5. Part 2 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections:

"**§ 108A-27.1. Assistance not an entitlement; State time limit on cash assistance.**

(a) Any assistance programs established under this Article are not entitlements, and nothing in this Article shall create any property right.

(b) Unless an extension or an exemption is provided pursuant to the provisions of the State Plan, any cash assistance under this Article that is provided to a person or a family in the employment program shall only be provided for a cumulative total of 24 months. After having received cash assistance for 24 months, the person or the

family may reapply for cash assistance, but not until after 36 months from the last month the person or the family received cash assistance. This subsection does not apply to child-only cases.

"§ 108A-27.2. Purpose; program description.

(a) The purpose of the Work First Program is to provide short-term assistance in the form of cash and services to help persons and families move from public assistance to self-sufficiency through gainful employment.

(b) The Work First Program shall include program administration and three categories of assistance to participants:

(1) Work First Family Assistance;

(2) Work First Diversion Assistance; and

(3) Work First Services.

(c) Work First Family Assistance may be paid to eligible families or as 'child-only' benefits, as established in the State Plan, based on availability of funds, State and federal law, and Work First Program objectives.

(d) The Department may distinguish among potential groups of recipients on whatever basis necessary to enhance program purposes and to maximize federal revenues so long as the rights, including the constitutional rights of equal protection and due process, of individuals are protected. The Department may, however, deny benefits to legal immigrants only to the extent benefits are denied by federal law.

"§ 108A-27.3. Duties of Department.

(a) The Department shall supervise the Work First Program. In supervising the Work First Program, the Department shall have the following duties:

(1) Prepare the State Plan in accordance with G.S. 108A-27.5 to submit to the General Assembly each fiscal year;

(2) Prepare and submit the State Plan to the Governor for signature, approval, and forwarding to federal officials as required by federal law or regulation;

(3) Establish the requirements for content and a schedule for submission by counties of local block grant plans for Work First and review and approve the block grant plans submitted by the counties;

(4) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;

(5) Supervise disbursement of local block grant funds to counties for Work First Diversion Assistance and Work First Services;

(6) Make payments of Work First Family Assistance and Work First Diversion Assistance;

(7) Establish outcome and performance goals based on economic factors and conditions for determining the performance of State and county agencies in the Work First Program and considering the well-being of children;

(8) Enter into Memoranda of Agreement with the county departments of social services in accordance with G.S. 108A-27.11;

(9) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;

(10) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program;

(11) Monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Program on the economic security and health of children and families, child abuse and neglect, school attendance, and academic and behavioral performance; and

(12) Monitor the performance of counties in the Work First Program.

(b) The Secretary may adopt temporary rules in accordance with the procedures of G.S. 150B-21.1 in order to:

(1) Implement provisions of the State Plan;

(2) Maximize federal revenues to prevent the loss of federal funds;

(3) Reduce State and county expenditures in current budgets;

(4) Enhance the ability of the Department to prevent fraud and abuse in the Work First Program;

(5) Modify the State Plan as necessary to meet changed circumstances after approval of the State Plan; and

(6) Respond to any of the circumstances enumerated in G.S. 150B-21.1.

(c) The Social Services Commission may adopt rules when necessary to implement the provisions of this Article.

(d) The Secretary may adopt rules when necessary to implement the provisions of the State Plan.

(e) The Secretary may delegate any portion of the Secretary's rule-making authority under this Article to the Social Services Commission.

"**§ 108A-27.4. Duties of county departments of social services.**

(a) Except as otherwise provided in this Article, the Work First Program shall be administered by the county departments of social services. The county departments of social services shall:

(1) Determine eligibility of persons and families for the Work First Program;

(2) Enter into Personal Responsibility Contracts with participants pursuant to the State Plan and ensure that the services and resources that are needed to assist participants to comply with their obligations under their Personal Responsibility Contracts are available;

(3) Comply with State and federal law relating to Work First and Title IV-A;

(4) Develop the local block grant plans for submission by the counties to the Department;

(5) Enter into and comply with Memoranda of Agreement in accordance with G.S. 108A-27.11;
(6) Ensure that participants engage in the minimum hours of work activities required by the State Plan and Title IV-A; and
(7) Ensure that the components of the Work First Program are funded solely from authorized sources and that federal TANF funds are used only for purposes and programs authorized by federal and State law.

(b) With prior approval of the Department, a county department of social services may delegate any of its duties under this Article to another public agency or private contractor. Prior to delegating any duty, a county department of social services shall submit its proposed delegation to the Department as the Department may provide. Notwithstanding any delegation of duty, a county department of social services shall remain accountable for its duties under the Work First Program.

"§ 108A-27.5. State Plan.

(a) The Department shall prepare and submit to the General Assembly for its review and approval every fiscal year, in accordance with the procedures established in G.S. 143-16.1 for federal block grant funds, a State Plan that proposes the terms of the Work First Program. Prior to submitting a State Plan to the General Assembly, the Department shall consult with local governments and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from them. The State Plan shall include:

(1) Benefit levels, limitations, and payments and the method for calculating benefit levels and payments;
(2) Eligibility criteria, including asset and income standards;
(3) A description of eligible federal and State work activities and work activity requirements for recipients and any exceptions or exemptions proposed to those requirements;
(4) Provisions for when extensions may be granted to a person or family who reaches the time limit for receipt of benefits;
(5) Requirements for assignment of child support income and compliance with child support enforcement activities;
(6) Provisions for exceptions and exemptions to criteria, time limits, and standards;
(7) Provisions for sanctions for recipient failure to comply with program requirements;
(8) Terms and conditions for repayment of Work First Diversion Assistance by recipients who subsequently receive Work First Family Assistance;
(9) Allocations of federal, State, and county funds for the Work First Program, including block grants to the counties for Work First Diversion Assistance and Work First Services;
(10) Levels of State and county funding for the Work First Program;

(11) Allocation for funding for administration at the State and local level not to exceed the federally established limitations on use of federal TANF funds for program administration;

(12) A description of the Department's consultation with local governments and private sector organizations and a summary of any comments received during the 45-day public comment period; and

(13) Anything required by federal law to be included in the State Plan.

(b) In addition to those items required to be included pursuant to subsection (a) of this section, the State Plan may include proposals to establish the following:

(1) Demonstration projects in one or more counties to assess the value of any proposed changes in State policy or to test ways to improve programs;

(2) Individual Development Accounts as authorized by Title IV-A;

(3) Automatic Medicaid eligibility or Medicaid benefit expansion for Work First Program participants;

(4) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform.

(c) The State Plan may provide that in cases where benefits are paid only for a child, the case is considered a family case.

(d) The State Plan may provide that recipients shall be required to enter into and comply with Personal Responsibility Contracts as a condition of receiving benefits. If provided for in the State Plan, the terms and conditions of Personal Responsibility Contracts shall be consistent with program purposes, federal law, and availability of funds.

"§ 108A-27.6. Work First Family Assistance; program changes.

The Department may change the Work First Family Assistance Program when required to comply with federal law. Any changes in federal law that necessitate a change in the Work First Program shall be effected by temporary rule until the next State Plan is approved by the General Assembly. Any change effected by the Department to comply with federal law shall be included in the State Plan submitted during the next session of the General Assembly following the change.

"§ 108A-27.7. Exemption from federal limitations for individuals convicted of certain drug-related felonies.

Individuals described in section 115 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 and convicted of a Category E, F, G, H, or I controlled substances felony offense after August 22, 1996, shall be eligible for both Work First and the food stamp program in this State six-months after the individual is released from custody, if the individual has committed no additional criminal controlled substances offenses during the six-month period and has

participated in and successfully completed any substance abuse treatment or counseling program determined by the county department of social services to be needed or appropriate. A county department of social services may, and is encouraged to, where appropriate, require substance abuse treatment as a condition for receiving benefits.

"§ 108A-27.8. Work First Program funding.

(a) The Department shall provide in its State Plan a formula for determining the amount of local block grants.

(b) Counties shall be reimbursed for Work First Family Assistance by the Department, subject to the availability of federal, State, and county funds and appropriations by the General Assembly.

(c) Work First Diversion Assistance and Work First Services shall be funded through federal funds, county funds, and the county block grant from the State pursuant to the State Plan.

"§ 108A-27.9. Maintenance of effort.

(a) Counties shall maintain one hundred percent (100%) maintenance of effort, as defined in the State Plan or by rule, in funding the Work First Program. Maintenance of effort shall be measured with reference to a base year defined in the State Plan.

(b) The Department shall define in the State Plan or by rule the term 'maintenance of effort' based on that term as defined in Title IV-A and shall provide to counties a list of activities that qualify for maintenance of effort requirements.

(c) If a county fails to comply with the maintenance of effort requirement in subsection (a) of this section, the Director of the Budget may withhold State moneys appropriated to the county pursuant to G.S. 108A-93.

"§ 108A-27.10. County block grants; Memoranda of Agreement.

(a) Each county shall submit annually to the Department for approval a local block grant plan that describes the Work First Diversion Assistance and Work First Services the county proposes to offer.

(b) Prior to submitting its local block grant plan to the Department, a county shall provide the public with an opportunity to review and comment upon its local block grant plan.

(c) A county local block grant plan shall include a description of how the county will:

(1) Utilize both public and private resources to assist in moving persons and families to self-sufficiency; and

(2) Address the needs of persons and families in areas specified by the Department, including transportation, housing, child care, and skills training.

(d) The local block grant plan shall also include a description of the county's priorities for serving families who need child care based on the needs of the community and the availability of services and funding.

(e) The local block grant plan shall be adopted by the county commissioners prior to its submission to the State.

(f) After the county submits its local block grant plan to the Department, the Department and the county shall agree upon the block grant plan by entering into a Memorandum of Agreement (MOA). The MOA shall include:

(1) The amount and any limitations or conditions on the use of funds under the local block grant, including disposition of any remaining funds at the end of the fiscal year;

(2) Outcome measures for determining the success of the Work First Program at the county level; and

(3) Any provision necessary to ensure proper operation of the Work First Program pursuant to federal law and to this Article.

In addition, the MOA may provide for Department accreditation of county programs, Departmental technical assistance to counties, and for other monitoring and performance enhancement techniques.

"§ 108A-27.11. Performance standards; corrective action.

(a) The Department shall establish acceptable levels of performance by counties in meeting Work First expectations, measured by outcome and performance goals contained in the State Plan or in the MOA. Economic factors and conditions and the well-being of children shall be considered in establishing the goals.

(b) The Department shall establish monitoring mechanisms and reporting requirements to measure the goals.

(c) When a county fails to meet acceptable levels of performance, the Department may take one or more of the following actions to assist the county in meeting its Work First goals:

(1) Notify the county of the deficiencies and add additional monitoring and reporting requirements.

(2) Require the county to develop and submit for approval by the Department a corrective action plan.

If a county fails to meet acceptable levels of performance for two consecutive years, or fails to comply with a corrective action plan developed pursuant to this section, the Department may assume control of the county's Work First Program, appoint an administrator to administer the county's Work First Program, and exercise the powers assumed to administer the Work First Program either directly or through contract with private or public agencies. County funding shall continue at levels established by the State Plan when the State has assumed control of a county Work First Program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the Work First Program.

"§ 108A-27.12. Appeals.

The Work First Program is a program of public assistance for purpose of an appeal under G.S. 108A-79."

Section 6. G.S. 108A-29 reads as rewritten:

"§ 108A-29. ~~Limitations on eligibility.~~ Preference for employment services.

~~(a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for Aid to Families with Dependent Children in order to be in compliance with federal regulations, but such~~

~~rules shall not be more restrictive than the work requirements applicable to the Job Opportunities and Basic Skills Training Program provided for in G.S. 108A-30.~~

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for ~~Aid to Families with Dependent Children assistance,~~ Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining ~~manpower~~ employment services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

(c) [Repealed.]"

Section 6.1. G.S. 108A-35 reads as rewritten:

"**§ 108A-35. Removal to another county.**

Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. ~~The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which the recipient has moved shall pay such assistance.~~"

Section 7. G.S. 108A-38 reads as rewritten:

"**§ 108A-38. Protective and vendor payments.**

~~Instead of the use of personal representatives provided for by G.S. 108A-37, when~~ When necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission or the Department, which rules and regulations shall be subject to applicable federal laws and regulations."

Section 8. G.S. 108A-49(a) reads as rewritten:

"(a) Benefits in the form of foster care assistance shall be granted in accordance with the rules and regulations of the Social Services Commission to any dependent child who ~~is~~ would have been eligible to receive ~~AFDC~~ Aid to Families with Dependent Children (as that program was in effect on June 1, 1995), but for his or her removal from the home of a specified relative for placement in a foster care facility; provided, that the child's placement and care is the responsibility of a county department of social services."

Section 9. G.S. 108A-58 reads as rewritten:

"**§ 108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.**

(a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within one year prior to the date of applying for medical assistance benefits, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest ~~therein, either by himself or through his legal representative,~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits ~~thereafter~~ as set forth in subsection (c) of this section.

Countable real and personal property includes real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest ~~therein,~~ in real or personal property, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for medical assistance benefits unless the person, or ~~his~~ the person's legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person ~~who, by himself or through his legal representative,~~ who sells, gives, assigns or transfers real or personal property or an interest ~~therein~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, ~~shall~~ shall, after the time of transfer, be ineligible to receive these benefits ~~thereafter~~ until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for ~~his~~ the person's maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

(1) For uncompensated value of at least one thousand dollars ($1,000) but not more than six thousand dollars ($6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;

(2) For uncompensated value of more than six thousand dollars ($6,000) but not more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;

(3) For uncompensated value of more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar ($500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars ($12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment of transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or ~~his~~ the person's legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving medical assistance or within one year of the date of an application for medical assistance, unless some other time period is mandated by controlling federal law, the uncompensated value, for the purposes of subsection (c), shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c).

(h) This section shall not apply to applicants for or recipients of ~~aid to families with dependent children~~ Work First Family Assistance or to persons entitled to medical assistance by virtue of their eligibility for ~~aid to families with dependent children.~~ Work First Family Assistance.

(i) This section shall apply only to transfers made before July 1, 1988."

Section 10. G.S. 108A-80 reads as rewritten:

"**§ 108A-80. Confidentiality of records.**

(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county

departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and ~~regulations and~~ regulations, and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of ~~Aid To Families with Dependent Children~~ Work First Family Assistance and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a Class 1 misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission shall have the authority to adopt rules and regulations governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Human Resources shall have the authority to adopt rules and regulations governing access to medical assistance case files."

Section 11. G.S. 108A-28, 108A-28.1, 108A-30, 108A-31, 108A-32, 108A-33, 108A-34, and 108A-39.1 are repealed.

PART 2. STATUTORY TECHNICAL AND CONFORMING CHANGES.

Section 12. G.S. 1-110(a) reads as rewritten:

"(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

(1) Receives food stamps.

(2) Receives ~~Aid to Families with Dependent Children (AFDC).~~ Work First Family Assistance.

(3) Receives Supplemental Security Income (SSI).

(4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.

(5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.

(6) Is seeking to obtain a domestic violence protective order pursuant to G.S. 50B-2.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

Section 13. G.S. 15-155.1 reads as rewritten:

"**§ 15-155.1. Reports to district attorneys of aid to dependent children and ~~illegitimate~~ out-of-wedlock births.**

The Department of Human Resources, by and through the Secretary of Human Resources, shall promptly after June 19, 1959, make a report to each district attorney, setting out the names and addresses of all mothers who reside in his prosecutorial district as defined in G.S. 7A-60 and are recipients of ~~aid to dependent children~~ assistance under the provisions of Part 2, Article 2, Chapter 108A of the General Statutes. Such report shall in some manner show the identity of the unwed mothers and shall set forth the number of children born to each said mother. Such a report shall also be made monthly thereafter setting out the names and addresses of all such mothers who reside in the district and who may have become recipients of aid to dependent children since the date of the last report."

Section 14. G.S. 15-155.2(a) reads as rewritten:

"(a) Upon receipt of such reports as are provided for in G.S. 15-155.1, the district attorney of superior court may make an investigation to determine whether the mother of an ~~illegitimate~~ out-of-wedlock child or who is a recipient of ~~aid to a dependent child or children,~~ Work First Family Assistance, has abandoned, is willfully neglecting or is refusing to support and maintain the child within the meaning of G.S. 14-326 or 49-2 or is diverting any part of the funds received as ~~aid to a dependent child~~ Work First Family Assistance to any purpose other than for the support and maintenance of ~~such dependent~~ a child in violation of G.S. 108-76.1. In making this investigation the district attorney is authorized to call upon:

(1) Any county board of social services or the Department of Human Resources for personal, clerical or investigative assistance and for access to any records kept by either such board and relating to the matter under investigation and such boards are hereby directed to assist in all investigations hereunder and to furnish all records relating thereto when so requested by the district attorney;

(2) The board of county commissioners of any county within his district for legal or clerical assistance in making any investigation or investigations in such county and such boards are hereby authorized to furnish such assistance in their discretion; and

(3) The district attorney of any inferior court in his district for personal assistance in making any investigation or investigations in the county in which the court is located and any district attorney so called upon is hereby authorized to furnish such assistance by and with the consent of the board of county commissioners of the county in which the court is located, which board shall provide and fix his compensation for assistance furnished."

Section 15. G.S. 95-25.3(d) reads as rewritten:

"(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."

Section 16. G.S. 105A-2(1) reads as rewritten:

"(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,~~ Work First Program provided in Part 2 of Article 2 of Chapter 108A, 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."

Section 17. G.S. 110-129(6) reads as rewritten:

"(6) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to

wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, ~~Aid for Dependent Children,~~ Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means 'wage' as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 18. G.S. 110-130.1 reads as rewritten:

"**§ 110-130.1. ~~Non-AFDC~~ Non-Work First services.**

(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).

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to

ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for ~~non-AFDC~~ non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

Section 19. G.S. 111-21 reads as rewritten:

"§ 111-21. Disqualifications for relief.

No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing ~~aid for dependent children~~ Work First Family Assistance and/or relief for the aged, and/or aid for the permanently and totally disabled."

Section 20. G.S. 120-70.71 reads as rewritten:

"§ 120-70.71. Powers and duties.

The Commission shall study State government policy and programs affecting the family, specifically addressing family issues from the point of existing laws, governmental programs needed or already functioning, and current family life issues. The Commission shall work in close collaboration with various agencies and programs dealing with the family. Among the issues the Commission may consider studying are the following:

(1) The feasibility of establishing model projects that would be located primarily in low-income, high dropout rate communities in North Carolina:
   a. To teach adults in the family to read; and
   b. To provide after school care for school-aged children using volunteers who could be retirees in the provision of services;

(2) The fiscal impact of a cash stipend created by a tax deduction or by industry dollars to promote literacy or the obtainment of a General Education Development Degree for persons who are presently illiterate or outside the school system;

(3) The need for day care for children and senior citizens, ~~an increase in Aid to Families with Dependent Children~~ changes in Work First Family Assistance payments and eligibility requirements, coordination of State law with federal welfare reform programs, in-home services for the elderly, additional funding for adult day care, and incentives for industries to develop day care programs;

(4) The relationship between the decline of real income and the tax structure, college tax credits, the minimum wage, and welfare support systems;
(5) The State's efforts in the areas of adolescent pregnancy and teaching about adolescent sexuality;
(6) A comprehensive review of State and federal programs encouraging business and industry to provide adequate child care for their employees;
(7) An analysis of what the State is currently doing to encourage North Carolina businesses and industry to provide adequate child care for their employees;
(8) A survey of North Carolina employers that presently provide child care options for their employees and what types of options they provide;
(9) A comprehensive study of the types of tax incentives and other incentives that would encourage North Carolina businesses -- especially those that have 50 or more employees -- to either provide on-site child care facilities or provide other child care options and the cost to the State of these tax incentives;
(10) Recommendations of what the State could be doing to encourage North Carolina businesses to provide on-site child care facilities or other child care options for their employees;
(11) Recommendations of a comprehensive policy for North Carolina to encourage businesses within the State to provide on-site child care facilities or other child care options for their employees;
(12) The concept of requiring coverage of child health supervision services in all health insurance policies sold or delivered within the State;
(13) The issue of domestic violence; and
(14) The problem of suicide among the youth of the State."

Section 21. The Department shall expand the amount of time a Work First Program participant who becomes employed may receive Medicaid benefits from 12 to 24 months so long as the participant otherwise meets the income eligibility requirements for Medicaid.

Section 22. Notwithstanding any law to the contrary, the Department of Human Resources may designate a pilot county for the purpose of conducting a demonstration work-study project for Work First Program participants in the county that will provide participants with the option to attend community college paid with Work First funds while continuing to require the participants to meet work requirements. This pilot shall be funded by the pilot county using the federal and State funding allocated to the pilot county for the Work First Program. The Department shall evaluate the work-study project and report to the General Assembly on or before March 1, 1999.

Section 23. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.1 Page 1 of __

Date_____,1997

Comm. Sub. []
Amends Title []

Senator Bill Martin

moves to amend the bill on page 3, lines 7 - 16, by rewriting those lines to read:

"Section 3. G.S. 108A-25(a) reads as rewritten:

" (a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services under supervision of the Department of Human Resources or the Department of Human Resources ~~under~~ pursuant to federal regulations or ~~under~~ rules ~~and regulations~~ adopted by the Social Services Commission or the Secretary of Human Resources: ~~and under the supervision of the Department of Human Resources:~~

(1) ~~Aid to families with dependent children;~~ Work First Program;
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program."; and

on page 3, line 27, by deleting the word "Department" and substituting the word "Secretary"; and

on page 4, line 20, by rewriting that line to read:
"Work First Program assistance to legal immigrants only on the same basis that federal law denies the use of federal TANF funds to legal immigrants."; and

on page 5, lines 12 - 13, by rewriting those lines to read:
"(b) The Secretary may adopt temporary rules or delegate authority to the Social Services Commission to adopt temporary rules when necessary to:"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.1 Page 2 of __

on page 5, lines 23 - 28, by rewriting those lines to read:
"(c) The Social Services Commission may adopt rules in accordance with G.S. 143B-153 when necessary to implement this Article and subject to delegation by the Secretary of any rule-making authority as set forth in subsection (b)."; and

on page 6, line 2, by deleting the phrase "G.S. 108A-27.11" and substituting the phrase "G.S. 108A-27.10"; and

on page 7, line 13, by rewriting that line to read:
" (13) Provisions to ensure that no Work First Program recipient, who is required to participate in work activities, shall be employed or assigned when any regular employee is on layoff from the same or substantially equivalent job, or when an employer terminates any regular employee or otherwise causes an involuntary reduction in the employer's workforce in order to hire Work First Program recipients; and
(14) Any additional provisions required by federal law to be included in the State Plan."

on page 7, line 39 through page 8, line 5, by rewriting those lines to read:
"Individuals convicted of Class E, F, G, H, or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and food stamp program:
1. six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of a required substance abuse treatment program determined appropriate by the county department of social services; or
2. six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of a required substance abuse treatment program determined appropriate by the county department of social services.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.1 Page 3 of __

A county department of social services may, and is encouraged to, require substance abuse treatment as a condition for receiving Work First Program or food stamp benefits as appropriate."; and

on page 13, line 4, by rewriting that line to read:
"~~regulations and~~ regulations, the Work First Program State Plan, and the rules and regulations of the Social Services"; and

on page 20, lines 43 and 44, by inserting the following sections between those lines and redesignating the remaining section accordingly:

" Section 23. The Department of Human Resources, the Department of Commerce, including the Employment Security Commission, the Office of State Budget and the Fiscal Research Division of the General Assembly shall develop forecasting methodology to predict trends that may impact Work First Program recipients arising from the imposition of program limitations and restrictions prior to recipients achieving self-sufficiency. The forecasting methodology shall be designed to predict, to the extent possible, the economic impact and societal consequences that may be experienced in the State or by a significant number of recipient families prior to the emergence of a crisis.

Section 24. The requirement that the Department prepare and sumbit the State Plan to the General Assembly for approval in accordance with the procedures set forth in G.S. 143-16.1 shall not be applicable for fiscal year 1997-98. Not later than May 1, 1997, the Department of Human Resources shall submit a final draft of the proposed State Plan to the Fiscal Research Division of the General Assembly. Fiscal Research shall submit the proposed plan to the House and Senate Appropriation Subcommittees on Human Resources and subsequent approval by the General Assembly. The House and Senate Appropriation Subcommittees on Human Resources shall conduct public hearings or a joint hearing on the proposed State Plan not earlier than five business days after its submission. If the General Assembly fails to act upon the proposed State Plan, the plan as submitted shall become the State Plan for fiscal year 1997-98."

SIGNED _____
Amendment Sponsor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.1 Page 4 of __

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 774

Short Title: DHR Secretary Salary Flexibility. (Public)

Sponsors: Senators Rand; Dalton, Lucas, and Martin of Guilford.

Referred to: Children & Human Resources.

April 9, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE SALARY OF THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-9 reads as rewritten:

"**§ 143B-9. Appointment of officers and employees.**

The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments and of elected officials shall be ~~as provided by law.~~ set by the General Assembly; provided, however, if the Secretary of the Department of Human Resources is a licensed physician, the Governor may, after consultation with the Advisory Budget Commission, set the salary of the Secretary at a level comparable to that of physicians employed by the Department of Human Resources.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department."

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

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April 18, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 774-DHR Secretary Salary Flexibility**
Senator Rand

G.S. 143B-9 specifies that the salary rate for principal State department heads shall be set by the General Assembly. Senate Bill 774 would amend this provision to allow the Governor in consultation with the Advisory Budget Commission to adjust the salary of the Secretary of Human Resources, to a level comparable to that of physicians employed by DHR, if the Secretary is a physician.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 690

Short Title: Needle Exchange Pilot Program. (Public)

Sponsors: Senators Lucas; Ballance, Dannelly, Jordan, Martin of Guilford, and Shaw of Cumberland.

Referred to: Children & Human Resources.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A COMMUNITY-BASED NEEDLE AND SYRINGE EXCHANGE PILOT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. (a) Pilot program established; purpose. There is established a community-based needle exchange pilot program to be administered by the Department of Environment, Health, and Natural Resources. For purposes of this section, a "needle exchange pilot program or project" is a program or establishment wherein a person who is an injecting drug user may exchange an old or used needle or syringe for a new one. As used in this section, the term "needle" includes "syringe". The purposes of the program are as follows:

(1) To reduce use of contaminated needles in circulation in order to reduce the transmission of Human Immunodeficiency Virus (HIV), Hepatitis B, and Hepatitis C;

(2) To provide HIV/AIDS risk reduction outreach education and referral for hard-to-reach Injection Drug Users (IDU) who are not in treatment; and

(3) To reduce the spread of HIV, Hepatitis B, and Hepatitis C to the sexual partners of injection drug users, and thus reduce the transmission of the disease to other populations.

(b) Administration of the pilot program. The Department shall administer the program as follows:

(1) The Department shall authorize the establishment of up to four community-based needle exchange pilot projects, each in a county with a high incidence or prevalence of HIV infection or injecting drug use behavior.

(2) Each pilot project shall be implemented by a public nonprofit or private nonprofit organization. Each organization selected to implement a project shall provide the Department with proof of nonprofit status, and must agree to develop and implement a pilot project that is comprehensive in scope and demonstrates coordination with local public health departments, substance abuse treatment programs, community health centers, law enforcement agencies, pharmacies, and other local health care providers.

(3) Each community-based pilot project shall do the following:

a. Maintain coordination with existing comprehensive HIV/AIDS prevention and outreach projects that target injecting drug users;

b. Provide for the free and anonymous exchange of needles and syringes for those needles and syringes returned;

c. Offer education on HIV and hepatitis transmission and prevention measures, assist program participants in obtaining drug treatment services, and ensure the safe disposal of needles.

(4) Approved needle exchange projects must use a reliable mechanism that will allow for the identification of program syringes after the syringes leave the exchange site. Each community-based project shall have an evaluation component to monitor:

a. Exchange rates of needles and syringes;

b. Behavioral changes of project participants, such as needle sharing and the use of condoms;

c. Project participation rates and the number of participants who enter drug treatment programs and other services.

(5) Upon notification by the Department that an organization has been authorized to implement a pilot project, the organization shall establish a process to promote community involvement in and planning and operations of the project. This requirement can be met by either establishing a new community advisory board or by making formal arrangements with an existing community advisory board. Each needle exchange project shall have six months to implement a community planning process to adopt policies and procedures for the operation of the program.

(6) Each organization implementing a community-based pilot project shall submit a report evaluating the effectiveness of the project to the Department. The Department shall determine the frequency and content of reports to be submitted by the organization.

Section 2. G.S. 90-113.22 shall not apply to persons who are employees or volunteers of, or injecting drug user participants in community-based needle exchange pilot projects administered by the Department pursuant to this act. This immunity from prosecution under G.S. 90-113.22 applies only to acts committed while carrying out the duties as employee or volunteer, or during the course of participating in the needle or syringe exchange.

Section 3. This act becomes effective July 1, 1997, and expires June 30, 2000.

North Carolina Minority Health Advisory Council
North Carolina AIDS Advisory Council

23 April 1997

S 690 - Needle Exchange Pilot Program

The bill will:

* **Authorize up to four pilot programs** run by local communities to provide clean needles to injecting drug users who agree to turn in their used ones. Participants *only* will receive a *temporary* exemption from the laws against possessing syringes without a prescription *only for as long as they are in the program.* The State Health Department must approve, monitor and evaluate each program and its effect.

* **Reduce the transmission of communicable diseases like HIV/AIDS,** hepatitis and others by reducing needle-sharing and increasing the safe disposal of used syringes. A National Institutes of Health (NIH) panel reports studies showing an 80% reduction in risk behavior and a 30% reduction in HIV in drug users participating in needle exchange programs.

* **Help people get off of drugs and into healthier lives.** In order to get clean needles, drug users will be in regular contact with trained outreach workers who will be better able to get them into drug treatment programs, detox and primary health care, benefiting the drug user, their sex partners -- and their children.

* **Make neighborhoods safer and protect police officers:** Neighborhoods were there are needle exchange programs find fewer discarded needles in parks, in yards and on the streets. Needle stick injuries to police officers making arrests were reduced by 66% in one needle exchange program.

* **Save taxpayers money:** The lifetime cost of AIDS is estimated to be from $119,000 to $169,000 per person and growing, with much of it paid by public programs like Medicaid. The annual cost of a needle exchange program is about $100,000. So saving only one life a year pays for the cost of running a program.

* ***NOT* increase drug use or encourage youth to use drugs.** The NIH and National Institutes of Medicine report that there is no evidence that these programs increase the frequency of injection or the number of new injecting drug users. Just the opposite: *Needle exchange does not help people maintain their habit, it helps people break their habit by getting them into drug treatment programs.*

* ***NOT* legalize needles.** The drug paraphernalia laws will remain in force. *Only* program participants will be exempted *only* for a program's syringes *only* for as long as they cooperate. To go beyond the four pilot programs that this bill would authorize, the sponsoring communities and State Health Department will have to come back to the General Assembly and report on the effect of these programs.

* ***NOT* make taxpayers pay for needle exchange programs** since communities that want to try needle exchange will have to raise their own money to do it.

Who Supports Needle Exchange? The North Carolina: Association of Public Health Directors, Medical Society, Old North State Medical Society, Public Health Association, Minority Health Advisory Council, Minority AIDS Health and Advisory Coalition, Nurses Association, AIDS Advisory Council, Academy of Trial Lawyers' Criminal Law Section, HIV/AIDS Alliance. The national US Centers for Disease Control, American Medical Association, American Public Health Association, National Commission on AIDS, General Accounting Office and 100 communities in 25 states with needle exchange programs now.

NCAAC Public Affairs Committee, c/o David Jones, Chair, PO Box 16071, Chapel Hill, NC 27516; 919-490-0585

VISITOR REGISTRATION SHEET

Children + Human Resources

~~APPROPRIATIONS/Natural and Economic Resources~~

Name of Committee

Date 4/22/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bode	Bode Call & Stroupe
Maria Vieira	Speaker, NC General Legislature
Lou B. Wilson	NCALTCF.
Janet Sweeney	NCARP
Megan Mallon	NASW-NC
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Annie McMillan	DHR
DAVE BEARDEN	DHR
Paula Wolf	Covenant with NC's Children
Polly Williams	NC Equity
Sharon Hirsch	NC Assn of County Directors of Soc Svcs.
Steven Haber	Jordan Price Wall Gray Jones
Jenni Woods	DHR
Ben Watts	DHR-DSS
Jane Ann Lee	DHR/DSS
Rheon Beal	DHR/DSS
Rob Schofield	NCJCDC
Don Gerlach	NCBTC
David Clegg	E.S.C.
Sherry Smith Bradsher	Cumberland Co. Dept. of Social Services
Pat Young	APPCNC/SCSL
Patrice Roesler	NCACC
Sandra Long	Hospice of the Carolinas

AGENDA
~~March~~ April 23 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB484 Vital Records Access
Sponsor: Senator Lucas

SB53 Penalties for Adult Care/Nursing Homes.
Sponsor: Senator Dannelly

SB304 County Share/Day Care Fraud Collections
Sponsor: Senator Odom

SB351 Social Services Commission Authority/AB
Sponsor: Senator Miller

SB445 Allow Nursing Interstate Compacts
Sponsor: Senator Rand

SB485 Medical Investigators/AB
Sponsor: Senator Lucas

SB486 Food Estab. - Clarify Def./AB
Sponsor: Senator Lucas

SB626 Office of Women's Health
Sponsor: Senator Forrester

SB636 Public Health Authority Act.
Sponsor Senator Hartsell

SB690 Needle Exchange Pilot Program
Sponsor Senator Lucas

SB754 Unemployment Benefits Spousal Changes.
Sponsor Senator Reeves

SB774 DHR Secretary Salary Flexibility
Sponsor Senator Rand

SB780 Telemedicine by Licensed Doctors
Sponsor Senator Odom

SB876 Criminal Checks/Contract Agencies.
Sponsor Senator Forrester

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Joseph Szulewski, Raleigh , NC
Sponsor: Senator Carrington

Kate Kosobucki Apex, NC
Sponsor: Senator Carrington

Next Meeting Scheduled for Wednesday, April 30, 1997 11:00am Room 544 LOB

Senate Committee on Children & Human Resources
Minutes of Wednesday, April 23, 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Wednesday, April 23, 1997 in Room 544 of the State Legislative Office Building.

Sixteen (16) members of the Committee were present.

Senator Jeanne Hl Lucas, Chairman of the Committee, called the meeting to order.

Senate Bill 484 entitled Vital Records Access was presented by its sponsor Senator Lucas. After some discussion of this bill Senator removed the bill for later discussion.

Senate Bill 53 entitled Penalties for Adult Care/Nursing Homes was presented by its sponsor Senator Dannelly. Senator Dannelly explained the bill, after discussion of the bill it was reported as unfavorable as to bill, but favorable as to committee substitute bill.

Proposed CS adopted

Senate Bill 445 entitled Allow Nursing Interstate Compacts was presented by its sponsor Senator Rand.. Senator Rand explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 780 entitled Telemedicine by Licensed Doctors, was presented by its sponsor Senator Gully. Senator Gully explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 485 entitled Medical Investigators/AB, was presented by its sponsor Senator Lucas. Senator Lucas explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 626 entitled Office of Women's Health, was presented by its sponsor Senator Forrester. Senator Forrester explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 304 entitled County Share/Day Care Fraud Collections was presented by its sponsor Senator Odom. Senator Odom explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 754 entitled Unemployment Benefits Spousal Changes, was presented by its sponsor Senator Reeves. Senator Reeves explained the bill. After some discussion of the bill it received a favorable report.

Senate Bill 636 entitled Public Health Authority Act was presented by its sponsor Senator Hartsell. Senator Hartsell explained the bill. After some discussion of the bill it received a favorable report.

Bernadette David-Yerumo

Bernadette David-Yerumo, Committee Clerk

_____

Senator Jeanne H. Lucas, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Tuesday, April 29, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **754** Unemp. Benefits Spousal Changes.
Sequential Referral: Appropriations
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **521** DOC Sexual Assault.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **636** Public Health Authority Act
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

S.B. **690** Needle Exchange Pilot Program
Draft Number: PCS8689
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, April 23, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **304** County Share/Day Care Fraud Collections
Sequential Referral: Appropriations
Recommended Referral: None

S.B. **445** Allow Nursing Interstate Compacts
Sequential Referral: None
Recommended Referral: None

S.B. **485** Medical Investigators/AB
Sequential Referral: None
Recommended Referral: None

S.B. **626** Office of Women's Health
Sequential Referral: None
Recommended Referral: None

S.B. **780** Telemedicine By Licensed Doctors
Sequential Referral: None
Recommended Referral: None

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

S.B. **53** Penalties for Adult Care/Nursing Homes
Draft Number: PCS1781
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 53*

Short Title: Penalties for Adult Care/Nursing Homes. (Public)

Sponsors: Senators Dannelly, Carpenter, Martin of Pitt, Cochrane; Albertson, Ballance, Hoyle, Lucas, Martin of Guilford, Perdue, and Winner.

Referred to: Children and Human Resources.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"**§ 131D-34. Penalties; remedies.**

(a) Violations Classified. -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall require a plan of correction for each Type A Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type A Violation. The

Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A ~~Violation.~~ Violation in homes licensed for nine or fewer beds. The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars($10,000) for each Type A Violation in facilities licensed for 10 or more beds.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation. The Department may direct the facility to establish a specific plan of correction within a specific time period to address any Type B Violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~
~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~
~~b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,~~ fine
for violating the same specific provision of a statute or regulation for which it received a citation during the previous ~~six months or within the time period of the previous licensure inspection, whichever time period is longer.~~ 12 months. The counting of the ~~six month~~ 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the ~~date specified for correction~~ time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~

~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~

~~b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,~~ fine

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 ~~months or within the time period of the previous licensure inspection, whichever time period is longer.~~ months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee and efforts to correct violations;

(3) The number and type of previous violations committed by the licensee;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this ~~section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.~~ section.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Section 3. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

North Carolina General Assembly
Legislative Services Agency

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March 12, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: John Young and Sue Floyd

RE: SB 53-Adult Care Home and Nursing Home Penalties

The 1987 General Assembly established an administrative penalties process for violations of nursing home and rest home facility laws. These statutes that allow the Department of Human Resources to levy penalties on nursing homes and adult care homes do the following:

1. Classifies violations into;
    a. Type A-violation that is a substantial risk that death or serious physical harm has or might occur with a range of fines from $250 to $5000,
    b. Type B-violation that has a direct relationship to the health, safety, or welfare of any patient, but which does not create substantial risk that death or serious physical harm will occur with a range of fines up to $500.
2. Provides additional penalties for failure to correct violations.
3. Sets factors to be considered in determining the amount of the penalty.
4. Sets procedures for contesting penalties under the Administrative Procedure act.
5. Allows civil action for recovery of unpaid penalties.
6. Provides review of penalties by the Penalty Review Committee established by G. S. 131D-34(h). The Committee is composed of nine members appointed by the Secretary of DHR.

In addition to civil money penalties, DHR has several enforcement remedies available in State law:

1. Provisional license;
2. Suspension of admissions;
3. Temporary management;
4. Revocation of a license; and
5. Summary suspension of a license.

Senate Bill 53 would make the following changes to the current statutes that levy civil penalties on adult care homes and nursing homes:

1. Changes the range of civil penalties for Type A violations to "not less than $500 nor more than $10,000". (Currently, not less than $250 nor more than $5000). This change would apply to adult care homes licensed for more than nine beds and nursing homes.
2. Deletes the money penalty for Type B violations but requires DHR to require a plan of correction and DHR may require a plan of correction within a specific time period to address any Type B violation.
3. Requires local county departments of social services and DHR's Division of Facility Services personnel submit proposed penalty recommendations within 45 days of the citation of a violation.

2050

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 53

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

S53-ARI-01.1 Page 1 of __

Date_____,1997

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

moves to amend the bill on page 4, between lines 40 and 41, by inserting the following:

"Each member shall complete at least eight hours of training through a program developed by the Division of Aging, Department of Human Resources, prior to serving on the Committee. The training program shall cover standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 53*
Proposed Committee Substitute S53-PCS1781

Short Title: Penalties for Adult Care/Nursing Homes. (Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST ADMINISTRATIVE PENALTIES FOR ADULT CARE HOMES AND NURSING HOMES WHICH ARE FOUND TO BE IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"**§ 131D-34. Penalties; remedies.**

(a) Violations Classified. -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred.~~ results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of

correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;

b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and

c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5000) for each Type A ~~Violation.~~ Violation in homes licensed for nine or fewer beds. The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation in facilities licensed for 10 or more beds.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not ~~create~~ result in substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to two hundred fifty dollars ($250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~

~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~

~~b. Has received a citation for which the Department in the discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,~~ penalty

for violating the same specific provision of a statute or regulation for which it received a citation during the previous ~~six months or within the time period of the previous licensure inspection, whichever time period is longer.~~ 12 months. The counting of the ~~six-month~~ 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the ~~probability~~ fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;

(2a) ~~and efforts~~ Efforts by the licensee to correct violations;

(3) The number and type of previous violations committed by the ~~licensee;~~ licensee within the past 36 months;
(4) The amount of assessment necessary to insure immediate and continued compliance; and
(5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;
(2) The local department of social services who is responsible for oversight of the facility involved;
(3) The licensee involved;
(4) The residents affected; and
(5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. ~~One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department.~~ At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and
(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be ~~unreasonable,~~ unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be ~~modified~~ adjusted accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) The Secretary may use monies collected as an administrative penalty to reimburse a facility for providing staff training if:

(1) The cost of training, not to exceed one thousand dollars ($1,000), is equal to or less than the amount of the assessed penalty;

(2) The assessed penalty is for the facility's only violation within a 12-month period, preceding the current violation and while the facility is under the same management; and

(3) The training is specific to the violation, approved by the Department of Human Resources, and taught by someone approved by the Department other than the provider.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to ~~G.S. 131E-129.~~ G.S. 131E-129 as follows: ~~The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer.~~

(1) The Secretary shall:

a. Administer the work of the committee;

b. Ensure provision of departmental staff review;

c. Evaluate the local departments of social services and the Division of Facility Services' penalty recommendations;

d. Ensure that recommendations by the Department are complete and submitted within 60 days of receipt of the initial recommendations from the local departments of social services or the Division of Facility Services; and

e. Provide written copies of all procedures to:

1. The penalty review committee;

2. The local department of social services who is responsible for oversight of the facility involved;

3. The licensee involved;

4. The residents affected; and

5. The families or guardians of the residents affected.

(2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

~~(1)~~ a. A licensed pharmacist;
~~(2)~~ b. A registered nurse experienced in long-term care;
~~(3)~~ c. A representative of a nursing home;
~~(4)~~ d. A representative of an adult care home; and
~~(5)~~ e. Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near' relative is a spouse, sibling, parent, child, grandparent, or grandchild.

(3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.

(4) Prior to serving on the committee, each member shall complete a training program provided by the Department of Human Resources that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.

(5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Section 2. G.S. 131E-129 reads as rewritten:

"**§ 131E-129. Penalties.**

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) 'Type A Violation' means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which ~~creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred.~~ results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of

correction for each Type A Violation. The person making the findings shall do the following:

a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them and set a date by which the violation must be corrected;

b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and

c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars ($250.00) nor more than five thousand dollars ($5,000)~~ five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type A Violation.

(2) 'Type B Violation' means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not ~~create~~ result in substantial risk that death or serious physical harm will occur. ~~The Department may impose a civil penalty in an amount up to five hundred dollars ($500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.~~ The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation.

(b) Penalties for failure to correct violations within time specified.

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars ($500.00) for each day that the deficiency ~~continues.~~ continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the ~~Department,~~ Department or its authorized representative, the Department shall assess the facility a

civil penalty in the amount of up to two hundred dollars ($200.00) for each day that the deficiency continues beyond the ~~date specified for correction~~ time specified in the plan of correction approved by the Department or its authorized representative without just reason for such failure. The Department or its authorized representative shall ~~conduct an on-site inspection of the facility to insure~~ ensure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) ~~or (2)~~ of subsection (a) when a facility under the same management, ownership, or ~~control:~~

~~a.~~ ~~Has~~ control has received a citation and paid a ~~fine, or~~

~~b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,~~ penalty

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 ~~months or within the time period of the previous licensure inspection, whichever time period is longer.~~ months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) The gravity of the violation, including the ~~probability~~ fact that death or serious physical harm to a resident ~~will result or~~ has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;

(2a) ~~and efforts~~ Efforts by the licensee to correct violations;

(3) The number and type of previous violations committed by the ~~licensee;~~ licensee within the past 36 months;

(4) The amount of assessment necessary to insure immediate and continued compliance; and

(5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The penalty review committee;

(2) The local department of social services who is responsible for oversight of the facility involved;

(3) The licensee involved;

(4) The residents affected; and

(5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. ~~One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department.~~ At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be ~~unreasonable,~~ unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be ~~modified~~ adjusted accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this ~~section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except~~

~~those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.~~ section.

(g1) The Secretary may use monies collected as an administrative penalty to reimburse a facility for providing staff training if:

(1) The cost of training, not to exceed one thousand dollars ($1,000), is equal to or less than the amount of the assessed penalty;

(2) The assessed penalty is for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and

(3) The training is specific to the violation, approved by the Department of Human Resources, and taught by someone approved by the Department other than the provider.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations."

Section 3. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

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April 15, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd and John Young

RE: Proposed Committee Substitute for SB 53 - Adult Care Home and Nursing Home Penalties

The 1987 General Assembly established an administrative penalties process for violations of nursing home and rest home facility laws in Chapters 131D and 131E of the General Statutes. The proposed committee substitute for SB 53 amends these statutes.

Violations are classified into **Type A and Type B Violations** as follows:

1. Type A-violation means that there is a substantial risk that death or serious physical harm has occurred or might occur.
2. Type B-violation means that there is a direct relationship to the health, safety, or welfare of any patient, but does not create substantial risk that death or serious physical harm will occur.

The PCS clarifies the definition of a **Type A Violation** to make clarification that the violation **results in death or serious physical harm, or results in substantial risk that death or physical harm** will occur. The **range of civil penalties is increased to "not less than $500 or more than $10,000"** from the previous range of "not less than $250 nor more than $5,000". Violations by homes licensed for nine or fewer beds would not be increased. Type A Violations would require an immediate plan of correction. The person making the finding (Department personnel or local DSS personnel) must (1) orally inform the administrator immediately of the violations, what must be done to correct them, and set a date for when the violations must be corrected and (2) Confirm the same in writing within 10 working days.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Under the PCS, **Type B Violations** would no longer carry a monetary penalty, but **would require plans of correction.** (Previously, they carried a civil penalty of up to $250.)

Currently, the statutes provide additional penalties for failure to correct violations and for repeat violations. The PCS would increase the period of time from 6 months to **12 months for the purpose of determining repeat violations.** Currently, DHR additionally has several enforcement remedies available as follows:

1. Provisional license.
2. Suspension of admissions.
3. Temporary management.
4. Revocation of license.
5. Summary suspension of license.

The PCS rewrites and **increases the factors to be considered in determining the amount of an initial penalty** and specifies that the proposed penalty **shall be submitted within 45 days** to DHR. The Secretary shall document findings and make written record available to all affected parties including:

1. The penalty review committee.
2. The local DSS responsible for oversight of the facility.
3. The licensee involved.
4. The residents potentially affected.
5. The family members or guardians of those affected.

Currently, the statutes allow for recovery of unpaid penalties through the administrative hearing process. The PCS sets the following **specific issues for review during the administrative hearing process:**

1. Reasonableness of the amount of the penalty assessed.
2. Degree to which each factor has been evaluated.

The hearing officer may recommend an adjusted penalty based on the findings.

The PCS provides that the **Secretary of DHR may use the funds collected from a penalty to reimburse a facility for staff training** if:

1. The cost does not exceed $1,000 and the cost is equal to or less than the amount of the penalty.
2. The penalty is the only violation by a facility within a 12-month period while under the same management.
3. The training specifically addresses the violation, is approved by DHR, and is taught by someone other than the provider.

The PCS clarifies that the **Secretary shall administer the work of the Penalty Review Committee and ensure notification** of all parties involved. Provides that each member shall complete a training program provided by DHR.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 445

Short Title: Allow Nursing Interstate Compacts. (Public)

Sponsors: Senator Rand.

Referred to: Children & Human Resources.

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE NORTH CAROLINA BOARD OF NURSING TO ENTER INTO INTERSTATE COMPACTS TO FACILITATE THE PRACTICE AND REGULATION OF NURSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.23(b) is amended by adding a new subdivision to read:

"(17) Enter into interstate compacts to facilitate the practice and regulation of nursing."

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

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April 16, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 445-Allow Nursing Interstate Compacts**
Senator Rand

Background

The revolution in telecommunications has expanded the horizon and is creating a new future for the practice of health care. With the leadership of such schools as the UNC School of Public Health and East Carolina Medical School, it will be commonplace to monitor, diagnose and treat patients from afar. Telehealthcare will know no state boundry. This raises issues of quality of care and discipline for the health licensing boards who are limited by state boarders.

Senate Bill 445

Senate Bill 445 would amend the Nursing Practice Act by adding to the powers of the Board of Nursing the ability to "enter into interstate compacts to facilitate the practice and regulation of nursing." The Board feels that this authority would facilitate their ability to respond to the need to regulate nursing practice in the new interstate telehealthcare settings.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 780

Short Title: Telemedicine By Licensed Doctors. (Public)

Sponsors: Senators Gulley; Rand.

Referred to: Children & Human Resources.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT NONRESIDENT PHYSICIANS WHO TREAT PATIENTS IN THIS STATE THROUGH THE USE OF ELECTRONIC OR OTHER MEDIUMS SHALL BE LICENSED IN THIS STATE AND SHALL BE SUBJECT TO REASONABLE REGULATIONS BY THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-18 reads as rewritten:

"**§ 90-18. Practicing without license; practicing defined; penalties.**

(a) No person shall practice medicine or surgery, or any of the branches thereof, nor in any case prescribe for the cure of diseases unless ~~he~~ the person shall have been first licensed and registered so to do in the manner provided in this Article, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this Article, ~~he~~ the person shall not be allowed to maintain any action to collect any fee for such services. The person so practicing without license shall be guilty of a Class 1 misdemeanor.

(b) Any person shall be regarded as practicing medicine or surgery within the meaning of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat, operate or attempt to operate on, or prescribe for or administer to, or profess to treat any human ailment, physical or mental, or any physical injury to or deformity of another ~~person.~~ person. A person who resides in another state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection shall be regarded as practicing medicine or surgery and shall be subject to the

provisions of this Article and appropriate regulation by the North Carolina Medical Board.

(c) ~~Provided, that the~~ The following ~~cases~~ shall not ~~come within the definition above recited:~~ constitute practicing medicine or surgery as defined in subsection (b) of this section:

(1) The administration of domestic or family remedies in cases of emergency.

(2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.

(5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.

(6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.

(7) The practice of midwifery as defined in G.S. 90-178.2.

(8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.

(9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.

(10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.

(11) The practice of medicine or surgery by any nonregistered reputable physician or surgeon ~~in a neighboring state coming~~ who comes into this ~~State for consultation~~ State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered ~~physician.~~ physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.

(12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. "Radiology" shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration

or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.

(13) Any act, task or function performed by an assistant to a person licensed as a physician by the North Carolina Medical Board when

a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and

b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and

c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

(14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the North Carolina Medical Board and the Board of Nursing and adopted by both boards.

(15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.

(16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Section 2. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.12A. Nonresident physicians.**

A patient may bring a medical malpractice claim in the courts of this State against a nonresident physician who practices medicine or surgery by use of any electronic or other media in this State."

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

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April 16, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 780 Telemedicine by Licensed Doctors**
Senator Odom

Background

The revolution in telecommunications has expanded the horizon and is creating a new future for the practice of health care. With the leadership of such schools as the UNC School of Public Health and East Carolina Medical School, it will be commonplace to monitor, diagnose and treat patients from afar. Telehealthcare will know no state boundary. This raises issues of quality of care and discipline for the health licensing boards who are limited by state boarders.

Senate Bill 780

Senate Bill 780 would amend the Medical Practice Act by:

(1) requiring that nonresident physicians who treat patients in this State through the use of electronic or other mediums be licensed in North Carolina and be subject to reasonable regulations of the Medical Board; and

(2) permitting patients to bring malpractice action in North Carolina courts against nonresident physicians who practice by use of electronics or other media.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 485*

Short Title: Medical Investigators/AB. (Public)

Sponsors: Senators Lucas; Carrington, Dalton, Forrester, Gulley, Hartsell, Jenkins, Jordan, Kinnaird, Martin of Guilford, Odom, Shaw of Cumberland, Weinstein, and Wellons.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF COUNTY MEDICAL INVESTIGATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-382 reads as rewritten:

"**§ 130A-382. County medical ~~examiners;~~** examiners and medical investigators; **appointment; term of ~~office; vacancies.~~** office.

(a) One or more county medical examiners or medical investigators for each county shall be appointed by the Chief Medical Examiner for a three-year term. ~~County medical examiners shall be appointed from a list of physicians licensed to practice medicine in this State submitted by the medical society of the county in which the appointment is to be made. If no names are submitted by the society, the Chief Medical Examiner shall appoint one or more medical examiners from physicians in the county licensed to practice medicine in this State. In the event no licensed physician in a county accepts an appointment, the Chief Medical Examiner may appoint one or more physicians licensed to practice medicine in this State from other counties or the local registrar, deputy registrar, subregistrar or coroner. In the event a medical examiner is unable to serve in a particular case or for a temporary period of time, the Chief Medical Examiner shall designate a physician licensed to practice medicine in this State, the local registrar, deputy registrar, subregistrar or coroner.~~

(b) A medical examiner or medical investigator may serve more than one county.

(c) The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner or medical investigator to do so.

(d) A medical examiner shall be a physician licensed to practice medicine in this State.

(e) A medical investigator shall:

(1) Be licensed to practice nursing in this State, or

(2) Be a physician's assistant registered under the rules of the North Carolina Board of Medical Examiners, or

(3) Successfully complete a training program in death investigation approved by the Chief Medical Examiner.

A county medical investigator appointed pursuant to this Article shall have the same powers and duties as a county medical examiner appointed under this Article."

Section 2. G.S. 130A-394 is repealed.

Section 3. Chapter 152 of the General Statutes is repealed.

Section 4. This act is effective when it becomes law except in those counties with a coroner serving on that date, in which case the act shall become effective upon the sooner of the leaving of office or the expiration of the current term of the coroner.

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April 20, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 485-Medical Investigators**
Senator Odom

HISTORY

The 1967 General Assembly created the Office of Chief Medical Examiner and provided for a statewide system for post-mortem medicolegal examinations. This function is required to properly investigate deaths that are medically unattended or due to homicide, suicide or accident. Before 1967 there was an elected office of coroner in each county that exercised some jurisdiction over suspicious deaths and their investigations and this dual system was allowed to continue until a county requested the abolition of the coroner by local bill. Currently, the following counties have coroners-Ashe, Harnett, Hoke, Hyde, Iredell, Johnston, Wilkes and Yadkin.

Since the office was created, there were counties that did not have sufficient numbers of physicians to serve as medical examiners. The original statutes allowed the Chief Medical Examiner to appoint a coroner as Acting Medical Examiner; this was later amended to include local registrars to give the Chief Medical Examiner greater flexibility in obtaining non-physician Acting Medical Examiners.

Senate Bill 485

Since some counties may continue to lack medical personnel to serve the function of medical examiner the bill establishes the appointment and qualifications of a non-physician county medical investigator to perform the functions of a county medical examiner. The bill would do the following:

(1) Amends G.S. 130A-382 to require that the chief medical examiner in each county appoint one or more medical examiners or

medical investigators for a three year term.;

(2) Establishes the qualifications for the medical investigator to include a licensed nurse, a registered physician's assistant, or someone who has completed a training program in death investigation approved by the chief medical examiner;

(3) Provides that the county medical investigator has the same powers and duties as a county medical examiner.

(4) Repeals the remains of the coroner system but allows the coroner in those counties having such a position to remain until the end of the current term or leaving office, whichever is sooner.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 626

Short Title: Office of Women's Health. (Public)

Sponsors: Senators Forrester; Cochrane, Lucas, Perdue, and Winner.

Referred to: Children and Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH IN THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES THE OFFICE OF WOMEN'S HEALTH.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 5 of Chapter 30 of the General Statutes reads as rewritten:

"Maternal and Child ~~Health.~~ Health and Women's Health."

Section 2. Article 5 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 8. Office of Women's Health.

"§ 130A-131.19. Office of women's health established.

(a) There is established in the Department the Office of Women's Health. The purpose of the office is to expand the State's public health concerns and focus to include a comprehensive outlook on the overall health status of women. The primary goals of the Office shall be the prevention of disease and improvement in the quality of life for women over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include but not be limited to:

(1) Developing a strategic plan to improve public services and programs targeting women;

(2) Conducting policy analyses on specific issues related to women's health;

(3) Facilitating communication among the Department's programs and between the Department and external women's health groups and community-based organizations;

(4) Building public health awareness and capacity regarding women's health issues by providing a series of services including evaluation, recommendation, technical assistance, and training; and

(5) Developing initiatives for modification or expansion of women-oriented services with the intent of establishing meaningful public/private partnerships in the future.

(b) The Office shall study the feasibility of establishing initiatives for:

(1) Early intervention services for women infected with HIV;

(2) Outreach, treatment, and follow-up services to women at high risk for contracting sexually transmitted diseases; and

(3) Development and expansion of emergency and transitional shelter programs for victims of domestic violence.

In conducting the study the Department shall take into consideration related services already in place in the Department and at the local level."

Section 3. The Department of Environment, Health, and Natural Resources shall report to the 1997 General Assembly, 1998 Regular Session, upon its convening, on the implementation of the Office of Women's Health. The Department's report shall include recommendations for legislation necessary to fully implement or enhance the effectiveness of the Office of Women's Health.

Section 4. The Department of Environment, Health, and Natural Resources shall implement this act using funds available to it for the 1997-98 and 1998-99 fiscal years.

Section 5. This act becomes effective July 1, 1997.

North Carolina General Assembly
Legislative Services Office

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April 21, 1997

M E M O R A N D U M

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd, Staff

RE: SB 626 - Office of Women's Health - Sen. Forrester

Senate Bill 626 adds a Part 8 to Article 5 of Chapter 130A of the General Statutes which regulates public health. It establishes a new Office of Women's Health within the Department of Environment, Health, and Natural Resources. The primary purpose of the Office is to prevent disease and improve the quality of life for women by the following:

1. Developing a strategic plan to improve public services and programs for women.
2. Conducting policy analyses on women's health issues.
3. Facilitating communication with various health groups and organizations.
4. Building awareness of women's public health issues.
5. Developing public/private partnerships to modify and expand services.

The Office is to study the following:

1. Early intervention services for women with HIV.
2. Outreach, treatment, and follow-up services for women at high risk for contracting sexually transmitted diseases.
3. Development and expansion of shelter programs for victims of domestic violence.

DEHNR shall report to the 1997 General Assembly, 1998 Session, upon convening, on the implementation of the Office. The Office shall be implemented using funds available for the biennium. The act becomes effective July 1, 1997.

S626-SMRI-01

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 304

Short Title: County Share/Day Care Fraud Collections. (Public)

Sponsors: Senator Odom.

Referred to: Children and Human Resources.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE COUNTIES WITH FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE DAY CARE FRAUD AND OVERPAYMENTS BY PAYING COUNTIES TWENTY-FIVE PERCENT OF ACTUAL COLLECTIONS.

The General Assembly of North Carolina enacts:

Section 1. (a) The Department of Human Resources shall award each county incentive bonuses for each of the county's day care fraud and overpayment claims collected. Each incentive bonus shall equal twenty-five percent (25%) of the actual amount collected and recouped by the county. Incentive bonuses paid pursuant to this section shall be used by the county for subsidized day care. On or before each fiscal year, each county shall report to Department of Human Resources on the use of the incentive bonuses paid pursuant to this section during the previous fiscal year.

(b) This act does not apply to claims for day care fraud recouped pursuant to the AFDC Fraud Control Program. Incentive bonuses for claims for day care fraud recouped pursuant to the AFDC Fraud Control Program shall be paid pursuant to Section 24.30 of Chapter 18 of the Session Laws, Second Extra Session 1996.

Section 2. This act is effective when it becomes law and applies to day care fraud and overpayment claims collected after July 1, 1997.

North Carolina General Assembly
Legislative Services Agency

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April 21, 1997

Memorandum

To: Senator Children and Human Resources Committee

From: Carolyn D. Johnson, Committee Counsel

Re: SB 304 - County Share/Day Care Fraud Collections

Senate Bill 304 authorizes the Department of Human Resources to award incentive bonuses to counties for each day care fraud or overpayment claim collected. Bonuses shall equal 25% of the amount collected and be used to subsidize day care. On or before the beginning of each fiscal year. counties must make a report on how the funds were used.

This act does not apply to claims for day care fraud that are subject to collection pursuant to the AFDC Fraud Control Program.

The bill is effective when it becomes law and applies to claims collected after July 1, 1997.

VISITOR REGISTRATION SHEET

4/23/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
MICHAEL OLSON	DEHNR MEDICAL EXAMINER, CHAPEL H
Torrey McLean	DEHNR
Judy G. Price	Register of Deeds Monroe, NC
Jon Levine	DEHNR
Jan Ellington	DEHNR
Rita Price	Monroe, N.C.
James Price	Monroe, N.C.
Pam Seamans	United Way of NC / Covenant w/ NC's children
Sudy Barber	NC Nurses Assoc.
Polly Johnson	NC Board of Nursing
Howard KRAMER	N.C. Bd of Nursing
Sonni Schmidt	NC JCDC
Rob Schofield	NCJCDC
David Clegg	E.S.C.
PASTOR E.L WHITE	MOUNT SINAI AIDS EDUCATION PROJECT Thomasville
Bob Blum	Dept of Justice
Megan Carney	BSW intern - NASWNC
Elizabeth Walker	NASW - NC Intern
Barbara Kellen-Smith	DEHNR - OAH
Brenda Simmons	NC Equity
Karen Lin	NCACOSS - Intern.
Sherry Smith Bratcher	Cumberland Co. Dept. of Social Services

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Evelyn Hawthorne	WCHS

AGENDA

April 24, 1997
Children and Human Resources

Chair: Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB1015 Welfare Reform Act of 1997
Sponsor: Senator Martin

SB351 Social Services Commission Authority/AB
Sponsor: Senator Miller

SB486 Food Estab. - Clarify Def./AB
Sponsor: Senator Lucas

SB690 Needle Exchange Pilot Program
Sponsor: Senator Lucas

SB876 Criminal Checks/Contract Agencies
Sponsor Senator Forrester

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Next Meeting Scheduled for Monday, April 28, 1997 4:30PM Room 423LOB

Senate Committee on Children & Human Resources
Minutes of Wednesday, April 24, 1997

The Senate Committee on Children & Human Resources met at 11 a.m. on Wednesday, April 24, 1997 in Room 544 of the State Legislative Office Building.

Five (5) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called this special meeting to be held in the chamber at her seat 17, to discuss further SB 486.

Senate Bill 486 entitled Food Estab. - Clarify Def./AB was presented by its sponsor, Senator Lucas. Senator Lucas explained the committee substitute bill. After some discussion of the bill it was decided it would be reported out as unfavorable as to bill but favorable as to committee substitute bill.

The business being completed, the meeting was adjourned. The next scheduled meeting will be on Monday April 28, 1997 at 11AM in room 423 LOB.

Bernadette David-Yerumo
Committee Clerk

Jeanne H. Lucas
Senator Jeanne H. Lucas
Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Thursday, April 24, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

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

S.B. **486** Food Estab. - Clarify Def./AB.

Draft Number:	PCSA740
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

QUESTIONS RAISED AT THE CHILDREN AND HUMAN RESOURCES SENATE COMMITTEE MEETING OF APRIL 22, 1997

1. **Why must counties meet a 100% maintenance of effort funding requirement, but the state must not?**

   Governor Hunt's proposed Work First Business Plan assumes 100% maintenance of effort on the part of both the state and counties.

   - Guaranteed county compliance with the 100% level requires statutory action by the General Assembly.
   - State compliance with the 100% requirement can be ensured through approval of appropriations bills and does not require statutory language.

2. **Why is the State allowed to transfer funds from TANF savings, while counties cannot?**

   All savings in federal funds resulting from the decline in welfare rolls will be reinvested to help families become self-sufficient, streamline automated systems, comply with federal reporting requirements, evaluate Work First, etc.

   Counties can realize savings. If a county meets all of the goals in its county block grant plan and county funds are left over, these unexpended funds can be used as the county sees fit.

   Governor Hunt's budget does propose using $27.9M in FY 97-98 and $31.5M in FY 98-99 and beyond in federal TANF funds to free up state funds for Smart Start expansion and, in FY 97-98 only, to offset the cost of some additional expansion priorities in DHR. Senate Bill 352 reduces this transfer to $23.3 M.

3. **Do the provisions on page 10, lines 34 - 40 [Section 8. G.S. 108a-49(A)] and page 12 lines 33 - 36 (Section 9. G.S. 108a-58) fit together?**

   These provisions are unrelated. The bill makes necessary technical changes. The first change allows children to continue qualifying for foster care assistance under the old AFDC eligibility standards in effect on June 1, 1995. The second change is also technical. It ensures that the transfer of property provision under Medicaid does not apply to families receiving Work First.

   Neither of these provisions establish an entitlement to Work First cash assistance.

4. **Will benefit levels go down for families? If so, how?**

   The key changes in benefit calculation include:

   - Counting all income of a family unless that income is excluded by other law. The most significant change is that Supplemental Security Income (SSI) and Adoption Assistance would be counted as income in determining a family's eligibility and payment amount.
   - Subtracting a family's net income from the payment standard rather than the need standard. This means that a family's payment would be reduced dollar for dollar based on net income, whereas now, a family's payment is reduced by only 1/2 of their net income.

Giving families a job bonus for three months by disregarding their earnings in calculating their family's payment. From the fourth month on, 55% of the individual's gross earnings will be disregarded, greatly simplifying the current method.

Based on these proposals:

- Payments will not change for families with no income.
- Families' income will increase dramatically for the first 3 months of work as a result of the job bonus.
- Benefits for families with only unearned income will decrease since net monthly income is subtracted from the payment rather than the need standard.
- Families with a parent or child receiving federal disability or other previously non-countable income will see payments decrease since that income was previously not counted in determining eligibility and payment amounts.

5. Are families in Work First automatically eligible for Medicaid?

Under federal law, Work First recipients are no longer automatically entitled to Medicaid. The proposed state legislation, however, allows us to change Medicaid policies to enable Work First participants to qualify for Medicaid without a separate determination.

6. Why are convicted drug felons ineligible for cash assistance?

The federal law specifically excluded convicted drug felons from receiving cash assistance but allowed states to enact legislation to include them.

7. Why are individuals convicted of other felonies not addressed?

The federal welfare reform law limits eligibility only for convicted drug felons. It did not address other felony convictions.

8. What are the sanctions for counties that don't submit a county plan or operate a Work First program?

SB 1015 requires counties to operate a Work First program and submit a county block grant plan. Counties that refuse to comply with these requirements would be in violation of state law.

9. Under the federal block grant, is reducing the welfare rolls more important than helping families achieve self-sufficiency?

The goals of self-sufficiency and reducing the welfare rolls are closely linked. In the long run, we won't achieve a permanent reduction in our welfare rolls if families do not become self-sufficient.

Lowering our welfare rolls allows us to reinvest savings in services (e.g. child care, substance abuse treatment, etc.) that will help families get and keep their jobs.

10. What benefits are families eligible to receive when they leave Work First?

See Attachments A1 and A2 for scenarios showing benefits for which families may be eligible.

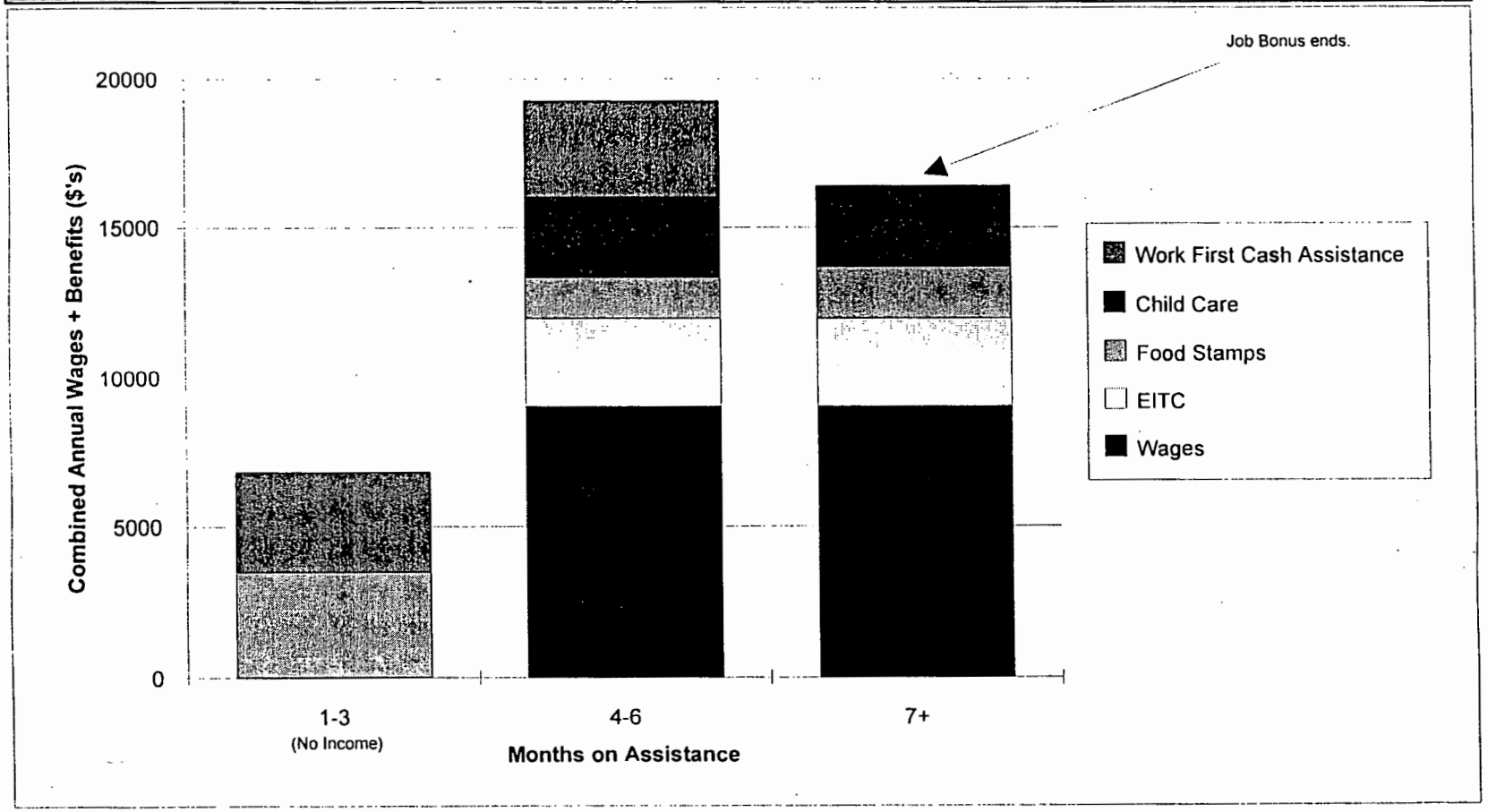
11. What is different about the current program and the provisions of the federal welfare reform law?

See Attachment B for a side-by-side description of the current program and the impact of the new federal welfare reform law.

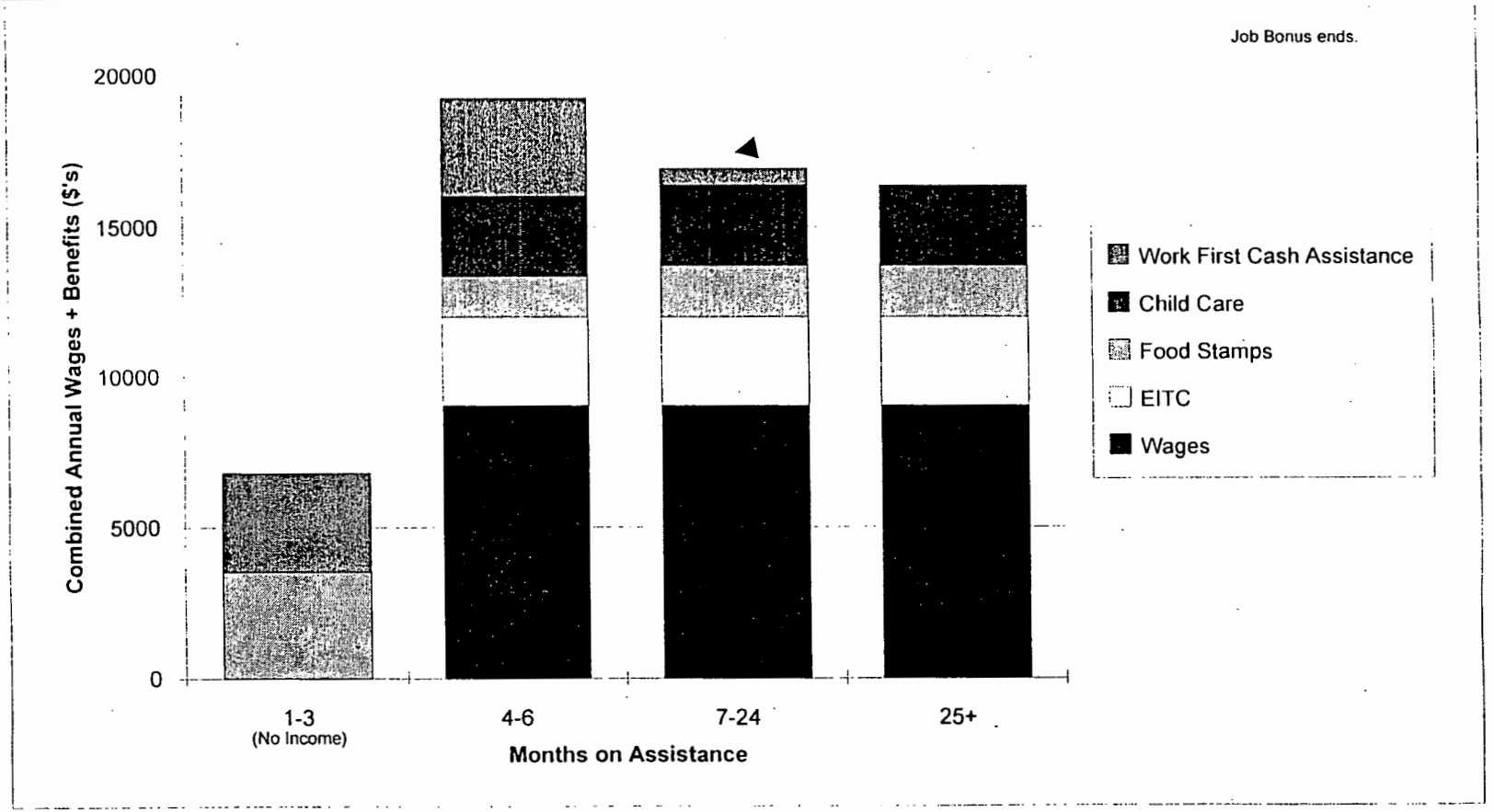
12. Is North Carolina's program more liberal than the federal requirements?

North Carolina's recommendations are not more liberal than the federal law. For example, on top of the federal 5-year lifetime limit on cash assistance, North Carolina has a 2- year limit on cash assistance for families in the work program. North Carolina also requires 50% more hours of work (or a combination of work and a work activity) than federal law -- 30 hours in North Carolina compared with 20 under federal law.

This scenario illustrates the benefits available to a mother and two children before and after she goes to work.
Months 1-3: Mother is unemployed.
Months 4-6: Mother goes to work, her annual gross income is $12,000 (approximately $6/hr, full-time). Upon going to work, she receives a "job bonus." This bonus freezes her cash assistance check at the level prior to going to work. It will also ease her transition into the workforce and ensures that she and her children are eligible for Transitional Medicaid.
Months 7+: This family loses its eligibility for cash assistance. The loss in cash assistance may be replaced by Food Stamps. At this income level, she and her family maintain eligibility for Transitional Medicaid thru Month 18. Thereafter, her children may be eligible to receive "Medicaid for Infants and Children" (MIC). Her eligibility for EITC also continues. In Month 7, the benefit levels outlined below are the same that would be available to working families at this income level (and who did not receive Work First Cash Assistance).



This scenario illustrates the benefits available to a mother and two children before and after she goes to work.
Months 1-3: Mother is unemployed.
Months 4-6: Mother goes to work part-time, her annual gross income is $6,000 (approximately $6/hr). Upon going to work, she receives a "job bonus." This bonus freezes her cash assistance check at the level prior to going to work. It will also ease her transition into the workforce and ensure that she and her children are later eligible for Transitional Medicaid.
Months 7-24: This family keeps its eligibility for cash assistance, but at a lower benefit level. They also maintain eligibility for Food Stamps, Medicaid and the Earned Income Tax Credit (EITC).
Month 25+: Mother and children lose their eligibility for Work First Cash Assistance because they have received for 24 months. Thereafter, her children may be eligible to receive "Medicaid for Infants and Children" (MIC). Her eligibility for EITC also continues. In Month 25, the benefit levels outlined below are the same that would be available to working families at this income level (and who did not receive Work First Cash Assistance).



SUMMARY OF FEDERAL WELFARE REFORM LEGISLATION AND IMPACT ON WORK FIRST

Issue	Previous Work First With Waivers	New Federal Requirements	North Carolina Proposal
Funding	Funding for the Work First (Aid to Families with Dependent Children) and Emergency Assistance was open-ended. Regardless of the level of expenditures, federal reimbursement would always be available. Employment program (old JOBS Program) funds were capped. Matching was required but not maintenance of effort.	Total funding for these three Programs has been consolidated into one block grant, called the Temporary Assistance For Needy Families Block Grant. Funding is capped annually for the next five years with no increase built in for inflation. Some additional funding may be available for certain high growth-low payment states (North Carolina is likely one) and some bonus funding is possible for high performing states (still being defined) and reduction of out-of-wedlock births. States are held to an 80% maintenance of effort. States are allowed to use these federal dollars for any purpose that meets the intent of the federal legislation.	Counties would receive block grants for administration and Work First Services to operate their work program and provide emergency assistance as defined in their local plan. Federal funds would be used to make payments and funds would be reinvested in other initiatives such as child care to assist families.
Entitlement Status	Cash assistance was an entitlement. Any family that met eligibility requirements received cash assistance.	Federal law specifies that nothing funded under the Temporary Assistance For Needy Families Block Grant is an entitlement.	Remove the entitlement provision.
Time Limits	Federal law had no time limit. Through approved waivers, North Carolina got a two-year time limit on receipt of cash assistance for families in the work program.	Families where an adult head of household is included in the payment can not receive cash assistance more than 60 months. Up to 20% of families may be exempted from the 5 year lifetime limit.	Keep the two-year time limit for those in the employment program and adopt the federal 5 year life-time limit for all families with an adult. Define the hardship categories closer to the end of the 5 years.
Work Requirements	Adults in the work program had to work 30 hours per week or participate in a combination of work and training for 30 hours per week regardless of the age of their youngest child. Up until 1995, there was a federal participation rate of 20% for single parents; in 1996, there was an unemployed parent participation rate of 50%. Federally allowable work activities were broadly defined and included significant educational components.	Participation rates for all families begins with 20% and increases to 50% by 2002; two-parent participation rate begins at 75% and increases to 90% by 1999. Federally allowable activities are more narrowly defined eliminating most educational components with the main exception being limited vocational training. States are allowed to exempt from the work requirement a single parent who has a child under age 1.	Continue with the tougher requirement of 30 hours per week; exempt the single caretaker of a child under age 1 from participation; require work participation for at least one parent in a two-parent family before the family receives a monthly payment.

SUMMARY OF FEDERAL WELFARE REFORM LEGISLATION AND IMPACT ON WORK FIRST

Issue	Previous Work First With Waivers	New Federal Requirements	North Carolina Proposal
Basic Eligibility Criteria	Federal regulations governed eligibility criteria. North Carolina's approved waivers allowed changes to the program beginning July 1, 1996.	States were given maximum flexibility to design their welfare programs to meet local needs.	Simplify the eligibility determination process to the extent possible so that staff can spend less time doing paperwork and more time working with families. Changes are proposed in how families' income is counted, how assets are considered, who is included in a payment, who can apply for and receive cash assistance for a child, and the payment calculation methodology.
Drug Felons	No provision.	Drug felons convicted on or after August 22, 1996, are not eligible for cash assistance or food stamps unless a state law opts out of the provision or modifies it.	Some drug felons would remain ineligible for assistance while others could be eligible after 6 months.
Personal Responsibility Contracts	Families were required to sign a Personal Responsibility Contract or not receive cash assistance. The contract required that children stay in school, get immunized, and get medical check-ups, that parents cooperate with child support, and for many, outlined the steps they intended to take to get off of cash assistance.	A contract is allowed but not required.	Keep the Personal Responsibility Contract.
Teen Parents	Teen parents had to stay at home and stay in school, with few exceptions.	Same requirement.	Continue the requirement.
Family Cap	Families who had another child did not receive an increase in their payment, with some exceptions.	No requirement.	Keep the family cap provision.
Medicaid	Families that received Work First cash assistance were automatically eligible for Medicaid.	Technically no longer linked but states can maintain link for administrative purposes.	Keep the automatic eligibility for Medicaid so families and staff do not have to do a separate determination.

SUMMARY OF FEDERAL WELFARE REFORM LEGISLATION AND IMPACT ON WORK FIRST

Issue	Previous Work First With Waivers	New Federal Requirements	North Carolina Proposal
Non-Citizens	Most legal non-citizens were eligible for cash assistance. Illegal immigrants were not eligible.	States have to decide whether to provide cash assistance for non-citizens who were in the United States on August 22, 1996. Certain non-citizens defined in the legislation are eligible for assistance for 5 years from their date of entry into the U.S. and states decide whether to provide assistance after 5 years. Some non-citizens are ineligible for 5 years after they enter the U.S. and states must decide whether to provide assistance to them after the 5 years.	Cover non-citizens to the maximum extent of the law. Under no circumstances would illegal immigrants be eligible for cash assistance.
Benefit Diversion	One-time assistance up to 3 months worth of cash assistance was available to help meet a family's crisis situation and allow them to remain employed or become employed. Repayment was required if the family later began to receive Work First cash assistance.	No provision.	Continue the Diversion Assistance program.
Sanctions	Families who did not comply with provisions of the personal responsibility contract, including work requirements, saw a decrease in the amount of their payment. This was an incremental decrease based on the number of non-compliances.	Sanctions are allowed for non-compliance with work requirements and for non-compliance with personal responsibility contracts if states have them. Sanctions are required for non-cooperation with child support activities.	Continue existing sanctions.
Penalties for Criminal Activities	No specific provision.	Cash assistance and food stamps prohibited for fugitive felons fleeing prosecution, custody or probation or parole violators, and individuals convicted of misrepresenting their residence in order to receive assistance in more than one state.	Implement fully and add that to the list of ineligibles individuals who are convicted of misrepresenting their residence in order to receive assistance in more than one county in North Carolina.

This scenario illustrates the benefits available to a mother and two children before and after she goes to work.
Months 1-3: Mother is unemployed.
Months 4-6: Mother goes to work part-time, her annual gross income is $6,000 (approximately $6/hr). Upon going to work, she receives a "job bonus." This bonus freezes her cash assistance check at the level prior to going to work. It will also ease her transition into the workforce and ensure that she and her children are later eligible for Transitional Medicaid.
Months 7-24: This family keeps its eligibility for cash assistance, but at a lower benefit level. They also maintain eligibility for Food Stamps, Medicaid and the Earned Income Tax Credit (EITC).
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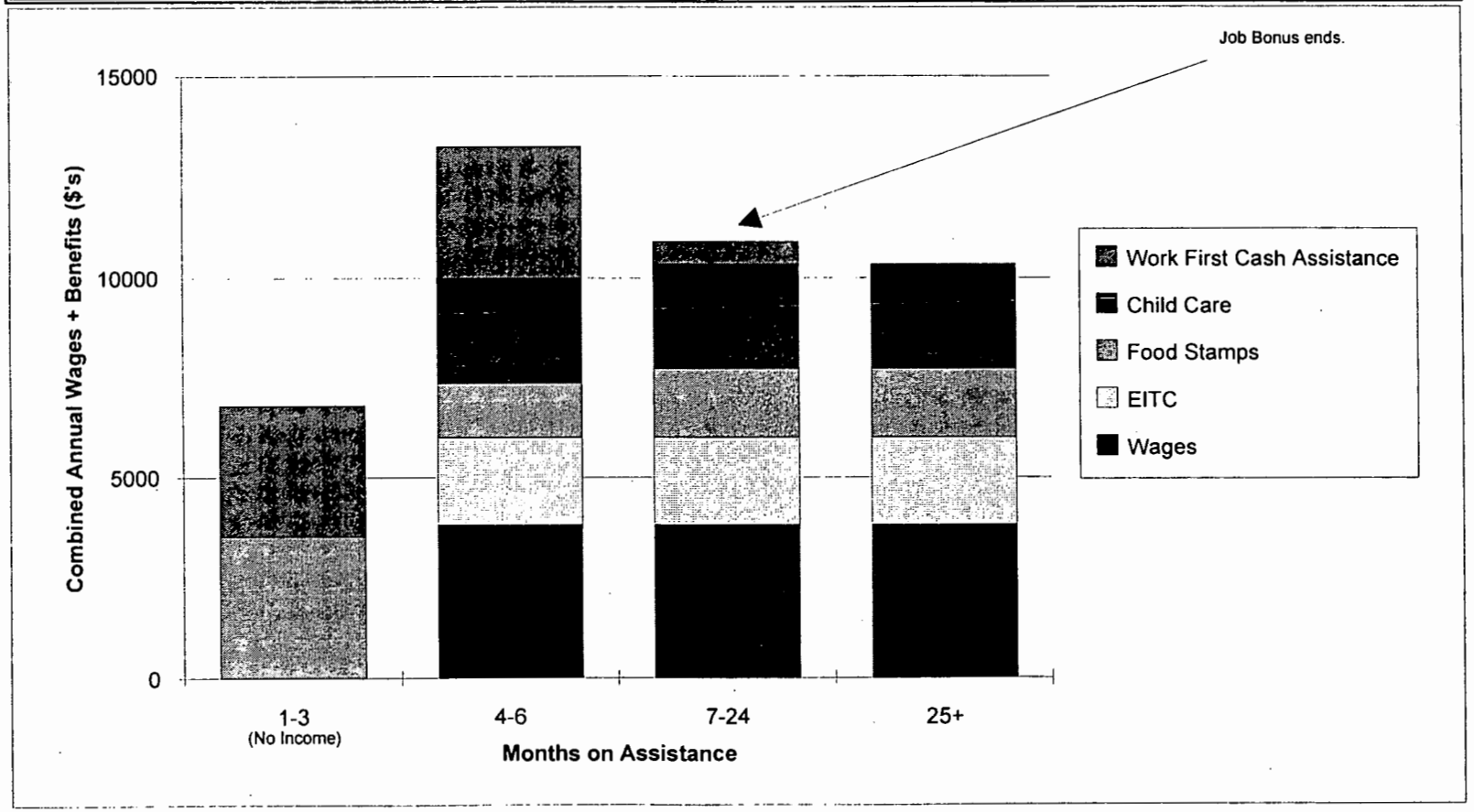

VISITOR REGISTRATION SHEET

Children and Human Resources
~~APPROPRIATIONS/Natural and Economic Resources~~ 4/24/97

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Fitzsimon	Common Sense Foundation
Bret Campbell	DEHNR
Lisa Aycock	DHR- DSS
Stanley Carson	DSS
Bob Blum	Dept of Justice
Jerome H. Aske, Jr.	Governors Off. Substance Abuse Policy
Sue Watts	DHR-DSS
Jane Smith	DSS
Janet M Wise	DEHNR
J.L. White	Mount Sinai AIDS Education Project
Jacque Clements	Piedmont HIV Consortium
Sara Harrison	NC HIV/AIDS ALLIANCE
David James	NC AAC
Megan Carney	BSW Intern – NASW NC
JOSEPH J. DELUCA	RULES REVIEW COMMISSION
Brandy L. Faught	Rep. Howard's Office
MAT DESPARD	PIEDMONT HIV HEALTH CARE CONSORTIUM
Myrna Mills	NASW-NC
Tommy Worth	Carolina Med Care System
Andy Ellen	NC Fem Bureau
Juliana Pilgrim	"
ANGIE McMILLAN	DHR
Whitney Otey	DHHR/DSS
Jason Thomas	P.O. Box 12982, Raleigh 27605
Steven Shaber	
Patricia Bowden	NCAC
Cynthia Young	DHR

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jane Smith	DHE/DSS
Phem Beal	DDR/DSS
Dorothy O'Neal	GACPD
Mac Brooks	GACPD
Pam Seamans	United Way of NC/ Covenant w/NC's Children
Peter Lemmin	DHR
Jenni Leonard	DHR/DSS

AGENDA

April 28, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB1015 Welfare Reform Act of 1997-2	Martin
SB929 Enhance Child Care	Cooper
SB484 Vital Records Access	Lucas
SB636 Public Health Authority Act	Hartsell
SB754 Unempl. Benefits Spousal Changes	Reeves
SB757 Advance Instr./Mental Health	Miller
SB851 Limit Provisional License	Kinnaird
SB876 Criminal Checks/Contract Agencies	Forrester
SB924 Criminal Records Checks/DHR	Odom
SB1023 Family Foster Home Standards	Foxx
SB521 DOC Sexual Assault.	Carpenter

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Pages: Andy Yates, Harrisburg,NC
Sponsor: Senator, Hartsell

Laticia King , Releigh, NC
Sponsor: Senator Reeves

Next Meeting Scheduled for Wednesday, April 29, 1997 8:15am Room 423LOB

Senate Committee on Children & Human Resources
Minutes of Monday, April 28, 1997

The Senate Committee on Children & Human Resources met at 3:30 p.m. on Monday, April 28, 1997 in Room 423 of the State Legislative Office Building.

Fifteen(15) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting order.

Senate Bill 1015 entitled Welfare Reform Act of 1997-2 was presented by its sponsor, Senator Martin of Guilford. Senator Martin explained the committee substitute bill. After some discussion of the bill it was decided it would be reported out as unfavorable as to bill but favorable as to committee substitute bill.

Senate Bill 929 entitled Enhance Child Care was presented by its sponsor Senator Cooper, Senator Cooper explained the bill. After discussion of the bill it received a favorable report.

The business being completed, the meeting was adjourned. The next scheduled meeting will be onTuesday April 29, 1997 at 8:15AM in room 423 LOB.

Bernadette David-Yerumo
Committee Clerk

Jeanne H. Lucas
Senator Jeanne H. Lucas
Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Monday, April 28, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **929** Enhance Child Care/AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Wednesday, April 30, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

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

S.B. **1015** Welfare Reform Act of 1997.

Draft Number:	PCS8690
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 1015

Short Title: Welfare Reform Act of 1997. (Public)

Sponsors: Senators Martin of Guilford; Cooper, Dannelly, Gulley, Kerr, Lucas, Phillips, and Wellons.

Referred to: Children and Human Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE WELFARE REFORM ACT OF 1997.

The General Assembly of North Carolina enacts:

PART 1. WORK FIRST PROGRAM.

Section 1. The title of Part 2 of Article 2 of Chapter 108A of the General Statutes reads as rewritten:

"Part 2. ~~Aid to Families with Dependent Children.~~ Work First Program."

Section 2. G.S. 108A-24 reads as rewritten:

"**§ 108A-24. Definitions.**

As used in Chapter 108A:

(1) 'Applicant' is any person who requests assistance or on whose behalf assistance is requested.

(1a) 'County department of social services' means a county department of social services, consolidated human services agency, or other local agency designated to administer or provide services pursuant to this Article.

(2) 'Department' is the Department of Human Resources, unless the context clearly indicates otherwise.

~~(3) 'Dependent child' is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care;~~

~~it shall also include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution; it shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act.~~

(3a) 'Family' consists of a minor child or children and one or more of their natural parents, adoptive parents, or stepparents living together.

(3b) 'Federal TANF funds' means the Temporary Assistance for Needy Families block grant funds provided for in Title IV-A of the Social Security Act.

(4) Repealed by Session Laws 1983, c. 14, s. 3.

(5) 'Recipient' is a person to whom, or on whose behalf, assistance is granted under this Article.

(6) 'Resident,' unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.

(7) 'Secretary' is the Secretary of Human Resources, unless the context clearly indicates otherwise.

(8) 'State Plan' is the plan prepared by the Department for the State's Work First Program pursuant to this Article.

(9) 'Title IV-A' means the Social Security Act, 42 U.S.C. § 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and to other provisions of federal law as may apply to services provided in this Article.

(10) 'Work activities' shall include 'federal work activities' and 'State work activities'.

a. 'Federal work activities' are those activities that count toward the State's fulfillment of the work participation rate required by Title IV-A.

b. 'State work activities' are other activities authorized by the Department for receipt of Work First Family Assistance.

(11) 'Work First' is the temporary assistance to needy families program established in this Article.

(12) 'Work First Diversion Assistance' is a short-term cash payment that is intended to produce a substantial reduction in the likelihood of a family requiring Work First Family Assistance.

(13) 'Work First Family Assistance' is a program of time-limited periodic cash payments to assist in maintaining the children of eligible families while the adult family members engage in activities to prepare for entering and to enter the workplace.

(14) 'Work First Services' are services funded from appropriations made pursuant to this Article and designed to facilitate the purposes of the Work First Program. These services may include eligibility determination, child care, transportation, substance abuse treatment and counseling, education, job placement assistance, employment counseling, prevention of out-of-wedlock births, case management, emergency cash assistance, and other activities designed to help families become self-sufficient."

Section 3. G.S. 108A-25(a) reads as rewritten:

"(a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services or the Department of Human Resources under federal regulations or under rules ~~and regulations~~ adopted by the Social Services Commission or the Department of Human Resources and under the supervision of the Department of Human Resources:

(1) ~~Aid to families with dependent children;~~ Work First Program;
(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program."

Section 4. G.S. 108A-27 reads as rewritten:

"**§ 108A-27. Authorization of ~~Aid to Families with Dependent Children Program.~~ Work First Program.**

~~The~~ (a) The Department ~~is authorized to~~ shall establish and supervise ~~an Aid to Families with Dependent Children Program.~~ the Work First Program to provide temporary assistance to eligible children and families. This program ~~is to~~ shall be administered by county departments of social services ~~under federal regulations and rules and regulations of the Social Services Commission.~~ in accordance with:

(1) This Article;
(2) The State Plan as defined in G.S. 108A-27.2; and
(3) Rules adopted pursuant to this Article by the Department or the Social Services Commission.

(b) The Department shall ensure that the Work First Program is established, supervised, and administered in compliance with federal law. The Department shall maximize federal receipts for the Work First Program.

(c) Whenever feasible, the Department shall ensure that as persons and families are moved to self-sufficiency, assistance shall be reduced and ended on a graduated basis rather than ending abruptly upon reaching the time limits established in State law for receiving assistance."

Section 5. Part 2 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections:

"**§ 108A-27.1. Assistance not an entitlement; State time limit on cash assistance.**

(a) Any assistance programs established under this Article are not entitlements, and nothing in this Article shall create any property right.

(b) Unless an extension or an exemption is provided pursuant to the provisions of the State Plan, any cash assistance under this Article that is provided to a person or a family in the employment program shall only be provided for a cumulative total of 24 months. After having received cash assistance for 24 months, the person or the family may reapply for cash assistance, but not until after 36 months from the last month the person or the family received cash assistance. This subsection does not apply to child-only cases.

"**§ 108A-27.2. Purpose; program description.**

(a) The purpose of the Work First Program is to provide short-term assistance in the form of cash and services to help persons and families move from public assistance to self-sufficiency through gainful employment.

(b) The Work First Program shall include program administration and three categories of assistance to participants:

(1) Work First Family Assistance;

(2) Work First Diversion Assistance; and

(3) Work First Services.

(c) Work First Family Assistance may be paid to eligible families or as 'child-only' benefits, as established in the State Plan, based on availability of funds, State and federal law, and Work First Program objectives.

(d) The Department may distinguish among potential groups of recipients on whatever basis necessary to enhance program purposes and to maximize federal revenues so long as the rights, including the constitutional rights of equal protection and due process, of individuals are protected. The Department may, however, deny benefits to legal immigrants only to the extent benefits are denied by federal law.

"**§ 108A-27.3. Duties of Department.**

(a) The Department shall supervise the Work First Program. In supervising the Work First Program, the Department shall have the following duties:

(1) Prepare the State Plan in accordance with G.S. 108A-27.5 to submit to the General Assembly each fiscal year;

(2) Prepare and submit the State Plan to the Governor for signature, approval, and forwarding to federal officials as required by federal law or regulation;

(3) Establish the requirements for content and a schedule for submission by counties of local block grant plans for Work First and review and approve the block grant plans submitted by the counties;

(4) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;

(5) Supervise disbursement of local block grant funds to counties for Work First Diversion Assistance and Work First Services;

(6) Make payments of Work First Family Assistance and Work First Diversion Assistance;

(7) Establish outcome and performance goals based on economic factors and conditions for determining the performance of State

and county agencies in the Work First Program and considering the well-being of children;

(8) Enter into Memoranda of Agreement with the county departments of social services in accordance with G.S. 108A-27.11;

(9) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;

(10) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program;

(11) Monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Program on the economic security and health of children and families, child abuse and neglect, school attendance, and academic and behavioral performance; and

(12) Monitor the performance of counties in the Work First Program.

(b) The Secretary may adopt temporary rules in accordance with the procedures of G.S. 150B-21.1 in order to:

(1) Implement provisions of the State Plan;

(2) Maximize federal revenues to prevent the loss of federal funds;

(3) Reduce State and county expenditures in current budgets;

(4) Enhance the ability of the Department to prevent fraud and abuse in the Work First Program;

(5) Modify the State Plan as necessary to meet changed circumstances after approval of the State Plan; and

(6) Respond to any of the circumstances enumerated in G.S. 150B-21.1.

(c) The Social Services Commission may adopt rules when necessary to implement the provisions of this Article.

(d) The Secretary may adopt rules when necessary to implement the provisions of the State Plan.

(e) The Secretary may delegate any portion of the Secretary's rule-making authority under this Article to the Social Services Commission.

"**§ 108A-27.4. Duties of county departments of social services.**

(a) Except as otherwise provided in this Article, the Work First Program shall be administered by the county departments of social services. The county departments of social services shall:

(1) Determine eligibility of persons and families for the Work First Program;

(2) Enter into Personal Responsibility Contracts with participants pursuant to the State Plan and ensure that the services and resources that are needed to assist participants to comply with their obligations under their Personal Responsibility Contracts are available;

(3) Comply with State and federal law relating to Work First and Title IV-A;
(4) Develop the local block grant plans for submission by the counties to the Department;
(5) Enter into and comply with Memoranda of Agreement in accordance with G.S. 108A-27.11;
(6) Ensure that participants engage in the minimum hours of work activities required by the State Plan and Title IV-A; and
(7) Ensure that the components of the Work First Program are funded solely from authorized sources and that federal TANF funds are used only for purposes and programs authorized by federal and State law.

(b) With prior approval of the Department, a county department of social services may delegate any of its duties under this Article to another public agency or private contractor. Prior to delegating any duty, a county department of social services shall submit its proposed delegation to the Department as the Department may provide. Notwithstanding any delegation of duty, a county department of social services shall remain accountable for its duties under the Work First Program.

"**§ 108A-27.5. State Plan.**

(a) The Department shall prepare and submit to the General Assembly for its review and approval every fiscal year, in accordance with the procedures established in G.S. 143-16.1 for federal block grant funds, a State Plan that proposes the terms of the Work First Program. Prior to submitting a State Plan to the General Assembly, the Department shall consult with local governments and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from them. The State Plan shall include:

(1) Benefit levels, limitations, and payments and the method for calculating benefit levels and payments;
(2) Eligibility criteria, including asset and income standards;
(3) A description of eligible federal and State work activities and work activity requirements for recipients and any exceptions or exemptions proposed to those requirements;
(4) Provisions for when extensions may be granted to a person or family who reaches the time limit for receipt of benefits;
(5) Requirements for assignment of child support income and compliance with child support enforcement activities;
(6) Provisions for exceptions and exemptions to criteria, time limits, and standards;
(7) Provisions for sanctions for recipient failure to comply with program requirements;
(8) Terms and conditions for repayment of Work First Diversion Assistance by recipients who subsequently receive Work First Family Assistance;

(9) Allocations of federal, State, and county funds for the Work First Program, including block grants to the counties for Work First Diversion Assistance and Work First Services;
(10) Levels of State and county funding for the Work First Program;
(11) Allocation for funding for administration at the State and local level not to exceed the federally established limitations on use of federal TANF funds for program administration;
(12) A description of the Department's consultation with local governments and private sector organizations and a summary of any comments received during the 45-day public comment period; and
(13) Anything required by federal law to be included in the State Plan.

(b) In addition to those items required to be included pursuant to subsection (a) of this section, the State Plan may include proposals to establish the following:
(1) Demonstration projects in one or more counties to assess the value of any proposed changes in State policy or to test ways to improve programs;
(2) Individual Development Accounts as authorized by Title IV-A;
(3) Automatic Medicaid eligibility or Medicaid benefit expansion for Work First Program participants;
(4) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform.

(c) The State Plan may provide that in cases where benefits are paid only for a child, the case is considered a family case.

(d) The State Plan may provide that recipients shall be required to enter into and comply with Personal Responsibility Contracts as a condition of receiving benefits. If provided for in the State Plan, the terms and conditions of Personal Responsibility Contracts shall be consistent with program purposes, federal law, and availability of funds.

"§ 108A-27.6. Work First Family Assistance; program changes.

The Department may change the Work First Family Assistance Program when required to comply with federal law. Any changes in federal law that necessitate a change in the Work First Program shall be effected by temporary rule until the next State Plan is approved by the General Assembly. Any change effected by the Department to comply with federal law shall be included in the State Plan submitted during the next session of the General Assembly following the change.

"§ 108A-27.7. Exemption from federal limitations for individuals convicted of certain drug-related felonies.

Individuals described in section 115 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 and convicted of a Category E,

F, G, H, or I controlled substances felony offense after August 22, 1996, shall be eligible for both Work First and the food stamp program in this State six-months after the individual is released from custody, if the individual has committed no additional criminal controlled substances offenses during the six-month period and has participated in and successfully completed any substance abuse treatment or counseling program determined by the county department of social services to be needed or appropriate. A county department of social services may, and is encouraged to, where appropriate, require substance abuse treatment as a condition for receiving benefits.

"§ 108A-27.8. Work First Program funding.

(a) The Department shall provide in its State Plan a formula for determining the amount of local block grants.

(b) Counties shall be reimbursed for Work First Family Assistance by the Department, subject to the availability of federal, State, and county funds and appropriations by the General Assembly.

(c) Work First Diversion Assistance and Work First Services shall be funded through federal funds, county funds, and the county block grant from the State pursuant to the State Plan.

"§ 108A-27.9. Maintenance of effort.

(a) Counties shall maintain one hundred percent (100%) maintenance of effort, as defined in the State Plan or by rule, in funding the Work First Program. Maintenance of effort shall be measured with reference to a base year defined in the State Plan.

(b) The Department shall define in the State Plan or by rule the term 'maintenance of effort' based on that term as defined in Title IV-A and shall provide to counties a list of activities that qualify for maintenance of effort requirements.

(c) If a county fails to comply with the maintenance of effort requirement in subsection (a) of this section, the Director of the Budget may withhold State moneys appropriated to the county pursuant to G.S. 108A-93.

"§ 108A-27.10. County block grants; Memoranda of Agreement.

(a) Each county shall submit annually to the Department for approval a local block grant plan that describes the Work First Diversion Assistance and Work First Services the county proposes to offer.

(b) Prior to submitting its local block grant plan to the Department, a county shall provide the public with an opportunity to review and comment upon its local block grant plan.

(c) A county local block grant plan shall include a description of how the county will:

(1) Utilize both public and private resources to assist in moving persons and families to self-sufficiency; and

(2) Address the needs of persons and families in areas specified by the Department, including transportation, housing, child care, and skills training.

(d) The local block grant plan shall also include a description of the county's priorities for serving families who need child care based on the needs of the community and the availability of services and funding.

(e) The local block grant plan shall be adopted by the county commissioners prior to its submission to the State.

(f) After the county submits its local block grant plan to the Department, the Department and the county shall agree upon the block grant plan by entering into a Memorandum of Agreement (MOA). The MOA shall include:

(1) The amount and any limitations or conditions on the use of funds under the local block grant, including disposition of any remaining funds at the end of the fiscal year;

(2) Outcome measures for determining the success of the Work First Program at the county level; and

(3) Any provision necessary to ensure proper operation of the Work First Program pursuant to federal law and to this Article.

In addition, the MOA may provide for Department accreditation of county programs, Departmental technical assistance to counties, and for other monitoring and performance enhancement techniques.

"**§ 108A-27.11. Performance standards; corrective action.**

(a) The Department shall establish acceptable levels of performance by counties in meeting Work First expectations, measured by outcome and performance goals contained in the State Plan or in the MOA. Economic factors and conditions and the well-being of children shall be considered in establishing the goals.

(b) The Department shall establish monitoring mechanisms and reporting requirements to measure the goals.

(c) When a county fails to meet acceptable levels of performance, the Department may take one or more of the following actions to assist the county in meeting its Work First goals:

(1) Notify the county of the deficiencies and add additional monitoring and reporting requirements.

(2) Require the county to develop and submit for approval by the Department a corrective action plan.

If a county fails to meet acceptable levels of performance for two consecutive years, or fails to comply with a corrective action plan developed pursuant to this section, the Department may assume control of the county's Work First Program, appoint an administrator to administer the county's Work First Program, and exercise the powers assumed to administer the Work First Program either directly or through contract with private or public agencies. County funding shall continue at levels established by the State Plan when the State has assumed control of a county Work First Program. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the Work First Program.

"**§ 108A-27.12. Appeals.**

The Work First Program is a program of public assistance for purpose of an appeal under G.S. 108A-79."

Section 6. G.S. 108A-29 reads as rewritten:

"**§ 108A-29. ~~Limitations on eligibility.~~ Preference for employment services.**

~~(a) The Social Services Commission shall adopt such administrative rules concerning work requirements as conditions of eligibility for Aid to Families with Dependent Children in order to be in compliance with federal regulations, but such rules shall not be more restrictive than the work requirements applicable to the Job Opportunities and Basic Skills Training Program provided for in G.S. 108A-30.~~

(b) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for ~~Aid to Families with Dependent Children assistance;~~ Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining ~~manpower~~ employment services including training and public service employment provided by or through State agencies or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons.

(c) [Repealed.]"

Section 6.1. G.S. 108A-35 reads as rewritten:

"**§ 108A-35. Removal to another county.**

Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. ~~The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of one month following his move, and thereafter the county to which the recipient has moved shall pay such assistance.~~"

Section 7. G.S. 108A-38 reads as rewritten:

"**§ 108A-38. Protective and vendor payments.**

~~Instead of the use of personal representatives provided for by G.S. 108A-37, when~~ When necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission or the Department, which rules and regulations shall be subject to applicable federal laws and regulations."

Section 8. G.S. 108A-49(a) reads as rewritten:

"(a) Benefits in the form of foster care assistance shall be granted in accordance with the rules and regulations of the Social Services Commission to any dependent child who ~~is~~ would have been eligible to receive ~~AFDC~~ Aid to Families with Dependent Children (as that program was in effect on June 1, 1995), but for his or her removal from the home of a specified relative for placement in a foster care

facility; provided, that the child's placement and care is the responsibility of a county department of social services."

Section 9. G.S. 108A-58 reads as rewritten:

"§ 108A-58. Transfer of property for purposes of qualifying for medical assistance; periods of ineligibility.

(a) Any person, otherwise eligible, who, either while receiving medical assistance benefits or within one year prior to the date of applying for medical assistance benefits, unless some other time period is mandated by controlling federal law, sells, gives, assigns or transfers countable real or personal property or an interest ~~therein, either by himself or through his legal representative,~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, shall be ineligible to receive medical assistance benefits ~~thereafter~~ as set forth in subsection (c) of this section.

Countable real and personal property includes real property, excluding a homesite, intangible personal property, nonessential motor and recreational vehicles, nonincome producing business equipment, boats and motors. The provisions of this act shall not apply to the sale, gift, assignment or transfer of real or personal property if and to the extent that the person applying for medical assistance would have been eligible for such assistance notwithstanding ownership of such property or an interest therein.

(b) Any sale, gift, assignment or transfer of real or personal property or an interest ~~therein,~~ in real or personal property, as provided in subsection (a) of this section, shall be presumed to have been made for the purpose of retaining or establishing eligibility for medical assistance benefits unless the person, or ~~his~~ the person's legal representative, who sells, gives, assigns or transfers the property or interest, receives valuable consideration at least equal to the fair market value, less encumbrances, of the property or interest.

(c) Any person ~~who, by himself or through his legal representative,~~ who sells, gives, assigns or transfers real or personal property or an interest ~~therein~~ in real or personal property for the purpose of retaining or establishing eligibility for medical assistance benefits, as provided in subsection (a) of this section, ~~shall~~ shall, after the time of transfer, be ineligible to receive these benefits ~~thereafter~~ until an amount equal to the uncompensated value of the property or interest has been expended by or on behalf of the person for ~~his~~ the person's maintenance and support, including medical expenses, paid or incurred, or shall be ineligible in accordance with the following schedule, whichever is sooner:

(1) For uncompensated value of at least one thousand dollars ($1,000) but not more than six thousand dollars ($6,000), a one-year period of ineligibility from date of sale, gift, assignment or transfer;

(2) For uncompensated value of more than six thousand dollars ($6,000) but not more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer;

(3) For uncompensated value of more than twelve thousand dollars ($12,000), a two-year period of ineligibility from date of sale, gift, assignment or transfer, plus one additional month of ineligibility for each five hundred dollar ($500.00) increment or portion thereof by which the uncompensated value exceeds twelve thousand dollars ($12,000), but in no event to exceed three years.

(d) The sale, gift, assignment or transfer for a consideration less than fair market value, less encumbrances, of any tangible personal property which was acquired with the proceeds of sale, assignment or transfer of real or intangible personal property described in subsection (a) of this section or in exchange for such real or intangible personal property shall be presumed to have been for the purpose of evading the provisions of this section if the acquisition and sale, gift, assignment or transfer of the tangible personal property is by or on behalf of a person receiving medical assistance or within one year of making application for such assistance and the consequences of the sale, gift, assignment of transfer of such tangible personal property shall be determined under the provisions of subsections (c), (f) and (g) of this section.

(e) The presumptions created by subsections (b) and (d) may be overcome if the person receiving or applying for medical assistance, or ~~his~~ the person's legal representative, establishes by the greater weight of the evidence that the sale, gift, assignment or transfer was exclusively for some purpose other than retaining or establishing eligibility for medical assistance benefits.

(f) For the purpose of establishing uncompensated value under subsection (c), the value of property or an interest therein shall be the fair market value of the property or interest at the time of the sale, gift, assignment or transfer, less the amount of compensation, if any, received for the property or interest. There shall be a rebuttable presumption that the fair market value of real property is the most recent property tax value of the property, as ascertained according to Subchapter II of Chapter 105 of the General Statutes. Fair market value for purpose of this subsection shall be such value, determined as above set out, less any legally enforceable encumbrances to which the property is subject.

(g) In the event that there is more than one sale, gift, assignment or transfer of property or an interest therein by a person receiving medical assistance or within one year of the date of an application for medical assistance, unless some other time period is mandated by controlling federal law, the uncompensated value, for the purposes of subsection (c), shall be the aggregate uncompensated value of all sales, gifts, assignments and transfers. The date which is the midpoint between the date of the first and last sale, gift, assignment or transfer shall be the date from which the period of ineligibility shall be determined under subsection (c).

(h) This section shall not apply to applicants for or recipients of ~~aid to families with dependent children~~ Work First Family Assistance or to persons entitled to medical assistance by virtue of their eligibility for ~~aid to families with dependent children.~~ Work First Family Assistance.

(i) This section shall apply only to transfers made before July 1, 1988."

Section 10. G.S. 108A-80 reads as rewritten:

"**§ 108A-80. Confidentiality of records.**

(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and ~~regulations and~~ regulations, and the rules and regulations of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of ~~Aid To Families with Dependent Children~~ Work First Family Assistance and State-County Special Assistance for Adults, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a Class 1 misdemeanor.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission shall have the authority to adopt rules and regulations governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Human Resources shall have the authority to adopt rules and regulations governing access to medical assistance case files."

Section 11. G.S. 108A-28, 108A-28.1, 108A-30, 108A-31, 108A-32, 108A-33, 108A-34, and 108A-39.1 are repealed.

PART 2. STATUTORY TECHNICAL AND CONFORMING CHANGES.

Section 12. G.S. 1-110(a) reads as rewritten:

"(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

(1) Receives food stamps.
(2) Receives ~~Aid to Families with Dependent Children (AFDC).~~ Work First Family Assistance.
(3) Receives Supplemental Security Income (SSI).
(4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
(5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
(6) Is seeking to obtain a domestic violence protective order pursuant to G.S. 50B-2.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

Section 13. G.S. 15-155.1 reads as rewritten:

"§ 15-155.1. Reports to district attorneys of aid to dependent children and ~~illegitimate~~ out-of-wedlock births.

The Department of Human Resources, by and through the Secretary of Human Resources, shall promptly after June 19, 1959, make a report to each district attorney, setting out the names and addresses of all mothers who reside in his prosecutorial district as defined in G.S. 7A-60 and are recipients of ~~aid to dependent children~~ assistance under the provisions of Part 2, Article 2, Chapter 108A of the General Statutes. Such report shall in some manner show the identity of the unwed mothers and shall set forth the number of children born to each said mother. Such a report shall also be made monthly thereafter setting out the names and addresses of all such mothers who reside in the district and who may have become recipients of aid to dependent children since the date of the last report."

Section 14. G.S. 15-155.2(a) reads as rewritten:

"(a) Upon receipt of such reports as are provided for in G.S. 15-155.1, the district attorney of superior court may make an investigation to determine whether the mother of an ~~illegitimate~~ out-of-wedlock child or who is a recipient of ~~aid to a dependent child or children,~~ Work First Family Assistance, has abandoned, is willfully neglecting or is refusing to support and maintain the child within the meaning of G.S. 14-326 or 49-2 or is diverting any part of the funds received as ~~aid to a dependent child~~ Work First Family Assistance to any purpose other than for the support and maintenance of ~~such dependent~~ a child in violation of G.S. 108-76.1. In making this investigation the district attorney is authorized to call upon:

(1) Any county board of social services or the Department of Human Resources for personal, clerical or investigative assistance and for access to any records kept by either such board and relating to the

matter under investigation and such boards are hereby directed to assist in all investigations hereunder and to furnish all records relating thereto when so requested by the district attorney;

(2) The board of county commissioners of any county within his district for legal or clerical assistance in making any investigation or investigations in such county and such boards are hereby authorized to furnish such assistance in their discretion; and

(3) The district attorney of any inferior court in his district for personal assistance in making any investigation or investigations in the county in which the court is located and any district attorney so called upon is hereby authorized to furnish such assistance by and with the consent of the board of county commissioners of the county in which the court is located, which board shall provide and fix his compensation for assistance furnished."

Section 15. G.S. 95-25.3(d) reads as rewritten:

"(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."

Section 16. G.S. 105A-2(1) reads as rewritten:

"(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,~~ Work First Program provided in Part 2 of Article 2 of Chapter 108A, 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."

Section 17. G.S. 110-129(6) reads as rewritten:

"(6) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, ~~Aid for Dependent Children,~~ Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means 'wage' as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 18. G.S. 110-130.1 reads as rewritten:

"**§ 110-130.1. ~~Non-AFDC~~ Non-Work First services.**

(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).

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for the separate proceedings. No attorney/client relationship shall be considered to

have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.

(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for ~~non-AFDC~~ non-Work First arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

Section 19. G.S. 111-21 reads as rewritten:

"**§ 111-21. Disqualifications for relief.**

No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing ~~aid for dependent children~~ Work First Family Assistance and/or relief for the aged, and/or aid for the permanently and totally disabled."

Section 20. G.S. 120-70.71 reads as rewritten:

"**§ 120-70.71. Powers and duties.**

The Commission shall study State government policy and programs affecting the family, specifically addressing family issues from the point of existing laws, governmental programs needed or already functioning, and current family life issues. The Commission shall work in close collaboration with various agencies and programs dealing with the family. Among the issues the Commission may consider studying are the following:

(1) The feasibility of establishing model projects that would be located primarily in low-income, high dropout rate communities in North Carolina:
   a. To teach adults in the family to read; and
   b. To provide after school care for school-aged children using volunteers who could be retirees in the provision of services;

(2) The fiscal impact of a cash stipend created by a tax deduction or by industry dollars to promote literacy or the obtainment of a General Education Development Degree for persons who are presently illiterate or outside the school system;

(3) The need for day care for children and senior citizens, ~~an increase in Aid to Families with Dependent Children~~ changes in Work First Family Assistance payments and eligibility requirements, coordination of State law with federal welfare reform programs, in-home services for the elderly, additional funding for adult day care, and incentives for industries to develop day care programs;

(4) The relationship between the decline of real income and the tax structure, college tax credits, the minimum wage, and welfare support systems;

(5) The State's efforts in the areas of adolescent pregnancy and teaching about adolescent sexuality;

(6) A comprehensive review of State and federal programs encouraging business and industry to provide adequate child care for their employees;

(7) An analysis of what the State is currently doing to encourage North Carolina businesses and industry to provide adequate child care for their employees;

(8) A survey of North Carolina employers that presently provide child care options for their employees and what types of options they provide;

(9) A comprehensive study of the types of tax incentives and other incentives that would encourage North Carolina businesses -- especially those that have 50 or more employees -- to either provide on-site child care facilities or provide other child care options and the cost to the State of these tax incentives;

(10) Recommendations of what the State could be doing to encourage North Carolina businesses to provide on-site child care facilities or other child care options for their employees;

(11) Recommendations of a comprehensive policy for North Carolina to encourage businesses within the State to provide on-site child care facilities or other child care options for their employees;

(12) The concept of requiring coverage of child health supervision services in all health insurance policies sold or delivered within the State;

(13) The issue of domestic violence; and

(14) The problem of suicide among the youth of the State."

Section 21. The Department shall expand the amount of time a Work First Program participant who becomes employed may receive Medicaid benefits from 12 to 24 months so long as the participant otherwise meets the income eligibility requirements for Medicaid.

Section 22. Notwithstanding any law to the contrary, the Department of Human Resources may designate a pilot county for the purpose of conducting a demonstration work-study project for Work First Program participants in the county that will provide participants with the option to attend community college paid with

Work First funds while continuing to require the participants to meet work requirements. This pilot shall be funded by the pilot county using the federal and State funding allocated to the pilot county for the Work First Program. The Department shall evaluate the work-study project and report to the General Assembly on or before March 1, 1999.

Section 23. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.1B

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator Bill Martin

moves to amend the bill on page 1, line 19 through page 2, line 4 by rewriting those lines to read:

"(3) 'Dependent child' is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support or care; it shall also include a minor who has been eligible for AFDC who is now living in a foster- care facility or child-caring institution; it shall also include a dependent child in school under 21 years of age as provided by Titles IV-A and XIX of the Social Security Act."; and

on page 2, line 6 by rewriting that line to read:
"their biological parents, adoptive parents, or stepparents living"; and

on page 3, lines 10 - 19, by rewriting those lines to read:
Section 3. G.S. 108A-25(a) reads as rewritten:
" (a) The following programs of public assistance are hereby established, and shall be administered by the county department of social services under supervision of the Department of Human Resources or the Department of Human Resources ~~under~~ pursuant to federal regulations or ~~under~~ rules ~~and regulations~~ adopted by the Social Services Commission or the Secretary of Human Resources: ~~and under the supervision of the Department of Human Resources:~~
(1) ~~Aid to families with dependent children;~~ Work First Program;

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(2) State-county special assistance for adults;
(3) Food stamp program;
(4) Foster care and adoption assistance payments;
(5) Low income energy assistance program."; and

on page 3, line 29, by deleting the citation "G.S. 108A-27.2" and substituting the citation "G.S. 108A-27.5"; and

on page 3, line 30, by deleting the word "Department" and substituting the word "Secretary"; and

on page 4, line 24, by rewriting that line to read:
"Work First Program assistance to legal immigrants only on the same basis that federal law denies the use of federal TANF funds to legal immigrants."; and

on page 5, lines 16 - 17, by rewriting those lines to read:
"(b) The Secretary may adopt temporary rules or delegate authority to the Social Services Commission to adopt temporary rules when necessary to:"; and

on page 5, lines 27 - 32, by rewriting those lines to read:
"(c) The Social Services Commission may adopt rules in accordance with G.S. 143B-153 when necessary to implement this Article and subject to delegation by the Secretary of any rule-making authority as set forth in subsection (b)."; and

on page 6, line 6, by deleting the phrase "G.S. 108A-27.11" and substituting the phrase "G.S. 108A-27.10"; and

on page 7, line 12, by rewriting that line to read:
" (13) Provisions to ensure that no Work First Program recipients, required to participate in work activities, shall be employed or assigned when:
a. any regular employee is on layoff from the sa or substantially equivalent job;
b. an employer terminates any regular employee or otherwise causes an involuntary reduction in the employer's workforce in order to hire Work First recipients; or

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c. an employer otherwise causes the displacement of any currently employed worker or positions, including partial displacement such as a reductions in hours of non-overtime work, wages or employment benefits, in order to hire Work First recipients.

(14) Provisions to ensure the establishment and maintenance of grievance procedures to resolve complaints by regular employees who allege that the employment or assignment of a Work First recipient is in violation subdivision (13) of this section;

(15) Provisions to ensure that Work First Program participants, required to participate in work activities, shall be subject to and have the same rights under federal, State or local laws applicable to non-Work First Program employees in similarly situated work activities, including but not limited to, health and safety standards and non-discrimination laws, provided that nothing in this subdivision shall be construed to prohibit Work First Program participants from receiving State or county services designed to assist Work First Program participants achieve job stability and self-sufficiency; and

(16) Any additional provisions required by federal law to be included in the State Plan."

on page 7, line 41 through page 8, line 9, by rewriting those lines to read:

"Individuals convicted of Class E, F, G, H, or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and food stamp program:

1. six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of a required substance abuse treatment program determined appropriate by the county department of social services; or

2. if not in custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and

successful completion of a required substance abuse treatment program determined appropriate by the county department of social services.

A county department of social services may, and is encouraged to, require substance abuse treatment as a condition for receiving Work First Program or food stamp benefits as appropriate."; and

on page 13, line 10, by rewriting that line to read:
"~~regulations and~~ regulations, the Work First Program State Plan, and the rules and regulations of the Social Services"; and

on page 13, line 36, by rewriting that line to read:
"33, 108A-34, 108A-39.1 and 108A-92 are repealed."; and

on page 21, lines 5 and 6, by inserting the following sections between those lines and redesignating the remaining section accordingly:

" Section 23. The Department of Human Resources, the Department of Commerce, including the Employment Security Commission, the Office of State Budget and the Fiscal Research Division of the General Assembly shall develop forecasting methodology to predict trends that may impact Work First Program recipients arising from the imposition of program limitations and restrictions prior to recipients achieving self-sufficiency. The forecasting methodology shall be designed to predict, to the extent possible, the economic impact and societal consequences that may be experienced in the State or by a significant number of recipient families prior to the emergence of a crisis.

Section 24. The requirement that the Department prepare and sumbit the State Plan to the General Assembly for approval in accordance with the procedures set forth in G.S. 143-16.1 shall not be applicable for fiscal year 1997-98. Not later than May 1, 1997, the Department of Human Resources shall submit a final draft of the proposed State Plan to the Fiscal Research Division of the General Assembly. Fiscal Research shall submit the proposed plan to the House and Senate Appropriation Subcommittees on Human Resources for subsequent approval by the General Assembly. The House and Senate Appropriation Subcommittees on Human Resources shall conduct public hearings or a joint hearing on the proposed State Plan not earlier than five business days after its submission. If the General

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Assembly fails to act upon the proposed State Plan, the plan as submitted shall become the State Plan for fiscal year 1997-98."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
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Senate Bill 1015

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(to be filled in by
Principal Clerk)

S1015-ARK-001.4

Date_____,1997

Comm. Sub. []
Amends Title []

moves to amend the bill on page 4, line 43 by rewriting that line to read:
" (7) Establish outcome and performance goals, in consultation with the county department of social services and county board of commissioners, based on economic"; and

on page 5, line 15, by rewriting that line to read:
" (12) Monitor the performance of counties in achieving Work First Program expectations and provide monthly progress reports to the county department of social services and the county board of commissioners."; and

on page 5, line 33 by rewriting the catchline to read:
"**§108A-27.4. Duties of county departments of social services and county boards of commission.**"; and

on page 6, line 13 by rewriting that line to read:
" (b) Upon the prior approval of the Department and in consultation with the county board of commissioners, a county department of social services"; and

on page 6, lines18 and 19 by inserting between those lines the following subsections:
" (c) The county board of commissioners shall appoint a committee of individuals to identify the needs of the population to be served to review and assist in developing the county block grant plan to respond to the needs. Committee membership shall include, but is not limited to, representatives of the county board of social

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servies, the board of the area mental health authority, the local public health board, the local school systems, the business community, the board of county commissioners and community-based organizations representative of the population to be served.

(d) The county board of commissioners shall review and approve the county block grant plan for submission to the Department."; and

on page 5, lines 3 and 4 by deleting those lines and redesignating the remaining subdivisions accordingly; and

on page 6, lines 5 and 6 by deleting those lines and redesignating the remaining subdivisions accordinly; and

on page 8, lines 20 - 23 by rewriting those lines to read:
" (a) Using the preceding fiscal year as the base year, counties shall maintain a financial commitment to the Work First Program equal to the proportion of State funds allocated to the Work First Program."; and

on page 8, line 30 by rewriting the catchline to read:
"**§108A-27.10. County block grants.**"; and

on page 9, lines 6 - 18 by deleting those lines; and

on page 9, line 20 by rewriting that line to read:
" (a) The Department, in consultation with the county department of social services and county board of commissioners, shall establish acceptable levels of performance by counties in"; and

on page 9, line 22 by rewriting that line to read:
"contained in the State Plan. Economic factors and conditions and the;".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

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

S1015-ARK-001.5

Date_____,1997

Comm. Sub. []
Amends Title []

moves to amend the bill on page 20, lines 37 through 40, by rewriting those lines to read:

" Section 21. Within 60 days of the effective date of this act, the Department of Human Resources is directed to apply for a waiver from the Health Care Finance Administration of the U.S. Department of Health and Human Services to expand transitional Medicaid benefits from 12 months to 24 months for recipients who are otherwise eligible for Medicaid. Prior to implementing expanded transitional Medicaid benefits pursuant to federal waiver, the Department shall determine the cost, if any, to expand transitional Medicaid benefits and report their findings to the General Assembly."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
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AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1015-ALV-3 Page 1 of __

Date 27 April ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator Kinnaird

moves to amend the bill on page 10, lines 37 and 38, by inserting between the lines:

"Section 7.1. (a) G.S. 108A-39.1 reads as rewritten:

'**§ 108A-39.1. ~~AFDC~~ Emergency Assistance Cash Program.**

The Social Services Commission shall adopt rules to implement ~~cash assistance and services components of the Aid to Families with Dependent Children-Emergency Assistance (AFDC-EA)~~ the Emergency Assistance Cash Program. Effective ~~November 1, 1986,~~ July 1, 1997, the Department of Human Resources, Division of Social Services, shall provide cash assistance to families whose family income does not exceed one hundred ten percent (110%) of the current federal poverty level as established by the U. S. Secretary of Health and Human Services and published annually in the Federal Register. Annual cash assistance shall not exceed three hundred dollars ($300.00). ~~State appropriations made for the nonfederal share of Emergency Assistance services and cash benefits shall not exceed a rate of fifty percent (50%) of the nonfederal share. For cash benefits authorized by any agency, the nonfederal share of the benefit shall be paid at a rate of fifty percent (50%) State funds and fifty percent (50%) county or other local funds. For cash benefits authorized by any State or local agency other than a county department of social services, the Department of Human Resources may assess the county for fifty percent (50%) of the nonfederal share of cash benefits authorized. For services benefits authorized by any agency, the nonfederal share of the benefit shall be paid by that agency entirely from county appropriations or other available public or private funds. Federal reimbursements earned through participation in this Program shall be paid to the participants in proportion to their payment of the nonfederal share.~~ Time limits and

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work requirements shall not apply to families due to the receipt of Emergency Assistance Cash, and those families shall not be counted as part of the federal work requirements quotient.'

(b) Funding for the Emergency Assistance Cash Program annually shall equal the total amount spent by federal, State, and local governments for the Title IV Emergency Assistance-Cash program in the 1996-97 fiscal year. The Department shall distribute the funds for this program to county departments of social services in an amount equal to the total federal, State, and local funds expended for this purpose in each county for the 1996-97 fiscal year.";

and on page 13, line 36, by rewriting the line to read:
"33, and 108A-34 are repealed.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 929

Short Title: Enhance Child Care/AB. (Public)

Sponsors: Senator Cooper.

Referred to: Children & Human Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART 1. ENHANCE AND IMPROVE CHILD CARE.

Section 1. The heading for Article 7, Chapter 110 of the General Statutes, reads as rewritten:

"ARTICLE 7.

~~Day-Care~~ Child Care Facilities."

Section 2. G.S. 110-85 reads as rewritten:

"**§ 110-85. Legislative intent and purpose.**

~~The~~ Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to ~~day~~ the early care and education of children:

(1) The State should protect ~~the growing number of~~ children ~~who are placed~~ in ~~day care~~ child care facilities ~~or in child care arrangements when these children are under the supervision and in the care of persons other than their parents, grandparents, guardians or full-time custodians during the day.~~ by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.

~~(2) This protection should assure that such children are cared for by persons of good moral character, that their physical safety and moral environment are protected, and that the day care resources conform to minimum standards relating to the health and safety of the children receiving day care.~~

(3) ~~This~~ Achieving this level of protection and early education requires the following ~~elements for a comprehensive approach:~~ elements: mandatory licensing of ~~day care~~ child care ~~facilities under minimum standards;~~ facilities; promotion of higher ~~levels of day care than required for a license~~ quality child care through the development of ~~higher~~ enhanced standards which operators may comply with on a voluntary basis; ~~registration of child day care homes which are too small to be regulated through licensing;~~ and a program of education to help operators improve their programs and to ~~develop~~ deepen public understanding of ~~day care~~ child care needs and ~~problems.~~ issues."

Section 3. G.S. 110-86 reads as rewritten:

"**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) Commission. The Child ~~Day Care~~ Care Commission created under this Article.

(2) Child ~~day~~ care. ~~Any child care~~ A program or arrangement ~~wherein~~ where three or more children less than 13 years ~~old~~ old, who do not reside where the care is provided, receive care ~~away from their own home by~~ on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their ~~parents, grandparents, aunts, uncles, brothers, sisters, first cousins,~~ guardians or full-time custodians, ~~or in the child's own home where other unrelated children are in care.~~ or from persons not related to them by birth, marriage, or adoption. Child ~~day~~ care does not include ~~seasonal recreational programs operated for less than four consecutive months in a year. Child day care also does not include arrangements that provide only drop-in or short-term child care for parents participating in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term child care offered in health spas, bowling alleys, shopping malls, resort hotels, and churches.~~ the following:

a. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;

b. Recreational programs operated for less than four consecutive months in a year;

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April 14, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 484-Vital Records Access Proposed Committee Sub.**
Senator Lucas

Senate Bill 484 changes the vital records (birth, death, marriage) requirements in the following ways:

(1) Amends G.S. 130A-93(b) to declare that birth records that show names of parents and children, parent's addresses and social security numbers are not public records as defined in Chapter 162.

(2) Vital records are State property and must be managed in accordance with the North Carolina Archives and History Act (Chapter 121).

(3) Lists those persons to whom the State Registrar and register of deeds may issue a certified copy of a vital record. (direct ancestor or descendent, stepparent, or funeral director)

(4) Amends G.S. 130A-93(e) to allow copies or abstracts of any database that contains individual-specific health or medical, birth data may be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who intends to use the information for medical research.

(5) When the State vital records database is used by local agencies the local the local agency shall charge a $10 fee, $5 of which shall be for the State to create and maintain a fully automated vital records database.

(6) The fee for a copy of a computer or microfilm database shall not exceed the cost of making and providing the copy.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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April 18, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 929-Enhance Child Care**

Senator Cooper

Senate Bill 929 makes the following changes to Article 7 of Chapter 110 of the General Statutes relating to child care:

1. Definitions
   a. Redefines "child care" as a program or arrangement when three or more children less than 13 years old, who do not reside where care is provided. receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from people other than their guardians or full time custodians or from people not related to them by birth, marriage, or adoption.
   b. Lists eleven activities that are not considered "child care" and don't have to be licensed.
   c. Five categories of care reduced to two: centers and family care homes. The term "facilities" will refer to both centers and family child care homes.
   d. Definitions added for "lead teacher" and "child care administrator".
2. Powers and duties of the Child Care Commission
   a. Adopt applicable rules and standards based on capacity of child care facility.
   b. Develop and adopt voluntary enhanced program standards that must address, at a minimum, staff/child ratios, staff

qualifications, parent involvement, operational and personnel policies, developmentally appropriate cirricula, and facility square footage.

c. Adopt rules regulating amount of time child care administrator must be on site at child care center.

d. Establish minimum standards for developmentally appropriate activities in child care facilities specified in the act.

e. Adopt rules specifying requirements for nutritious meals in family child care homes.

3. Licensing Changes

a. Allows the Secretary of DHR to issue a permanent "rated license" that will reflect program standards, staff education levels and compliance history.

b. Deletes one year limitation on license and is valid until Secretary notifies operator otherwise..

c. Drop-in and short term child care arrangements will be required to display a notice that they are not licensed.

4. Family Care Home Proposals

a. Requires verification of children's immunization and health assessments.

b. Raises the minimum age of a family child care provider from 18 to 21.

c. Effective January 1, 1998, requires family child care providers to have a high school diploma of its equivalent.

d. Providers will be required to complete annual on-going training in child development in addition to already required first aid and CPR.

e. Family care homes will provide activities and play materials that are safe and that meet children's needs.

f. Effective March 1, 1998, for new homes and unlicensed homes, requires criminal record checks for all household members over age 15 who are present when children are are in care . Also applies to nonregistered homes approved to receive subsidy.

g. Of the children present at any one time in a family child care home, no more than five children may be preschool aged, including the operator's own preschool aged children.

5. Child Care Center Proposals
    a. Effective January 1, 2003, directors of centers will have at least a NC Early Childhood Administration Credential, or its equivalent.
    b. Effective January 1, 2002, lead teachers in centers will be required to have at least a NC Early Childhood Credential or its equivalent.
    c. DHR will establish categories to recognize levels of staff education in order to develop staffing requirements appropriate to the size of centers.
    d. Topics for on-going staff training will be limited to nine areas of early care and education.
    e. All teachers in child care centers will be required to receive child development training annually.
6. Other Provisions
    a. Requires that all child care facilities must comply with all federal and state laws and local ordinances that pertain to health, safety and welfare. Does not apply to operator's school-aged children but does apply to operator's preschool children.
    b. Provides that religious sponsored child care center must be under direction or supervision of literate person at least 21 years of age and all staff counted toward meeting staff/child ratio must be at least 16, provided that people younger than 18 work under direct supervision of literate person at least 21. Effective January 1, 1998, the person operating a religious sponsored family child care home must be at least 18 years old and literate.

    c. Repeals playground rules that go into effect January 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 484*

Short Title: Vital Records Access/AB. (Public)

Sponsors: Senators Lucas; Conder, Dannelly, Forrester, Gulley, Hartsell, Jordan, Kinnaird, and Shaw of Cumberland.

Referred to: Children & Human Resources.

March 25, 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 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. 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-28-97

S. B. No. 484 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Jeanne Lucas
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by deleting the phrase "disposed of" and inserting "managed".

SIGNED Jeanne Lucas

ADOPTED BY THE COMMITTEE ON CHILDREN & HUM. RES.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Children & Human Resources 4/28/99

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
[illegible]	Bone Assoc.
[illegible] S. White	Register of Deeds Wendell NC
Joyce B. Harlan	Orange Co. Register of Deeds
Stephanie Farjad	DHR / Div. of Child Development
Janice Fain	DHR / Div. of Child Development
Jan Ellington	DEHNR
Whitney Obrig	DMHDDSAS
Starleen Scott Pobbins	DMHDDSAS
Deborah Ross	DCC
[illegible]	DCC
Tonya McLean	DEHNR
Julie Renaud	CCR+R of Wake
Sue Fleming-Hansen	CCR+R of Wake
Paula A. Abel	Covenant With NC's Children
Sonia Schmidt	NCJ+CDC
[illegible]	DEHNR
Deborah Bowen	NC Public Health Assoc.
Lynda McDaniel	DHR/DFS
Patricia Roenker	NCACC
Heidi Roesler	With mom
[illegible]	OSPL
Bev Watts	DHR/DSS

VISITOR REGISTRATION SHEET

Mid-Cont Human Resources — ~~State & Local Govt. & Personnel~~ — Name of Committee

4/28/97 — ~~April 2, 1997~~ — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jan Lewis	DEHNR
Don Gulford	NCGA
Tommy Worth	Carolinas HealthCare System
Jane O Gray	DOT
Chris Fitzsimon	Common Sense Foundation
Steve Davis	DHR

AGENDA

April 29, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB307 Independent Study/DHR Reorganization.	**Martin**
SB484 Vital Records Access	**Lucas**
SB636 Public Health Authority Act	**Hartsell**
SB754 Unempl. Benefits Spousal Changes	**Reeves**
SB757 Advance Instr./Mental Health	**Miller**
SB851 Limit Provisional License	**Kinnaird**
SB876 Criminal Checks/Contract Agencies	**Forrester**
SB889 American Sign Language.	**Martin**
SB924 Criminal Records Checks/DHR	**Odom**
SB962 Vol. Commitment/Mother on Drugs.	**Martin**
SB1023 Family Foster Home Standards	**Foxx**
SB521 DOC Sexual Assault.	**Carpenter**
SB1016 Dir. Pay/Subs. Abuse Prof.	**Martin**

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Next Meeting Scheduled for Wednesday, April 30, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Monday, April 29, 1997

The Senate Committee on Children & Human Resources met at 8:15a.m. on Tuesday, April 29, 1997 in Room 423 of the State Legislative Office Building.

Twelve (12) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting order.

Senate Bill 521 entitled DOC Sexual Assault, was presented by its sponsor, Senator Carpenter. Senator Carpenter explained the bill in addition to showing a film. After some discussion of the bill it was decided it would be reported out as favorable, as amended.

Senate Bill 754 entitled Unemp. Benefits Spousal Changes, was presented by its sponsor Senator Reeves, Senator Reeves explained the bill. After discussion of the bill it received a favorable report.

Senate Bill 636 entitled Public Health Authority Act, was presented by its sponsor Senator Hartsell, Senator Hartsell explained the bill. After discussion of the bill it received a favorable report as amended.

Senate Bill 484 entitled Vital Records Access/AB, was presented by its sponsor Senator Lucas. Senator Lucas explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to committee substitute bill.

The business being completed, the meeting was adjourned. The next scheduled meeting will be held on Wednesday April 30, 1997 at 11:00 am in Room 423 LOB.

Bernadette David-Yerumo, Committee Clerk

Senator Jeanne H. Lucas, Chairman

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 351

Short Title: Social Services Commission Authority/AB. (Public)

Sponsors: Senator Miller.

Referred to: Children & Human Resources.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE SOCIAL SERVICES COMMISSION HAS THE AUTHORITY TO SET PERSONNEL REQUIREMENTS IN MATERNITY HOMES, CHILD PLACING AGENCIES, AND CHILD CARE INSTITUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-153 reads as rewritten:

"**§ 143B-153. Social Services Commission -- creation, powers and duties.**

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General

Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by ~~G.S. 131D-1;~~ G.S. 131D-1 and for personnel requirements of staff employed in maternity homes;

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;

c. For the inspection and licensing of ~~child care~~ child care institutions and child placing agencies as provided by ~~G.S. 131D-10.5;~~ G.S. 131D-10.5 and for personnel requirements of staff employed in child care institutions and child placing agencies;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary day care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 351

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

S627-ALV-1 Page 1 of __

Date 4/24 ,1997

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

Senator Miller

moves to amend the bill on page 3, line 26,
by rewriting the line to read:
"agencies. These standards shall not apply to entities exempt under G.S. 131D-10.4;".

SIGNED Joanne Lucas
Amendment Sponsor

SIGNED Joanne Lucas
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 521

Short Title: DOC Sexual Assault. (Public)

Sponsors: Senator Carpenter.

Referred to: Children & Human Resources.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SEXUAL ASSAULT PROGRAM FOR INMATES AND EMPLOYEES OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-25.1. Sexual assault program for inmates and Department employees.**

(a) The Department shall provide, as part of every inmate's orientation, a program on sexual assault, with a goal to complete that program within seven days of commitment to the Department of Correction. The program shall provide inmates with at least the following information:

(1) An accurate presentation pertaining to sexual assault violence;

(2) Information on preventing and reducing the risk of sexual assault;

(3) Information on available counseling for victims of sexual assault; and

(4) The procedure for victims of sexual assault to request counseling.

(b) The Department shall provide sexual assault counseling on-site at the prison unit to any prisoner requesting it. The counseling shall be provided by trained or experienced counselors through the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the medical and chaplain staff of the Department. Counselors shall be granted reasonable access to Department of Correction institutions and prisoners for the purpose of providing confidential sexual assault counseling.

Unless the Director of the Division of Prisons finds a particular item to be unsuitable, the Department shall allow the distribution of materials on sexual assault and rape trauma syndrome developed or sponsored by community rape crisis centers or nonprofit organizations with expertise in sexual assault. Any such material provided to a correctional institution shall be made available to inmates in places where they may make use of them privately and without attracting undue attention, such as in the library, law library, medical clinic, recreation hall, mental health offices, and educational lobby areas.

The Department shall post notices of the availability of any community-based rape crisis counselors who are willing to provide confidential counseling. Communications between prisoners and rape crisis counselors are confidential. The Department shall cooperate with community rape crisis centers seeking to identify and provide counseling to former inmates who were the victims of sexual assault.

(c) The Department shall collect statistical data of all known, reported, or suspected incidents of sexual aggression or sexually motivated violence occurring within the State prison system. The Department shall compile this data on a quarterly and annual basis.

(d) The Department shall develop and implement employee training on the identification and prevention of sexual assault among inmates, in coordination with the Department's employee basic training program. The training shall be conducted by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and shall consist of at least two hours of training for each employee. The training shall be provided to new employees at orientation and shall also be part of annual employee training.

(e) The Department shall evaluate and classify each male prisoner with respect to the probable risk of sexual assault. When feasible, incoming inmates shall be handled separately until this classification is made. The classification shall be prominently displayed in the inmate's confidential file, and the Department shall consider the prisoner's classification when making housing assignments.

The Department shall also rate male prisoners as potential sexual assault offenders based upon (i) criminal history; (ii) incidents occurring during confinement; and (iii) reports of incidents that the Department determines to be credible. The Department shall take the prisoners' potential for sexual assault into consideration when making housing assignments.

The Department shall ensure that prisoners rated vulnerable or highly vulnerable to sexual assault and prisoners rated as potential assaulters are not housed in the same cell or room holding four or fewer inmates or placed in the showers at the same time, unless a prisoner rated as vulnerable consents to such arrangements. Any exceptions to this policy shall be reported to the Secretary within three days.

(f) The Department shall report annually to the Joint Legislative Commission on Governmental Operations on:

(1) The percentage of inmate orientation programs on sexual assault completed within seven days of commitment; and

(2) The Department's success in segregating prisoners rated vulnerable to sexual assault from prisoners rated as potential assaulters."

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

North Carolina General Assembly
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Memorandum

To: **Senate Children and Human Resources Committee**
From: **Carolyn D. Johnson, Committee Counsel**
Re: **SB 521 - DOC Sexual Assault**
Date: **April 23, 1997**

Senate Bill 521 amends Article 2 of Chapter 148 of the General Statutes to provide sexual assault information and instruction as a part of inmate orientation, and to provide two hours of instruction on the identification and prevention of sexual assault to Department of Correction (DOC) employees as a part of their basic and annual training programs.

At a minimum, inmates shall be provided: (1) accurate presentations pertaining to sexual assault violence, (2) information on preventing and reducing the risk of sexual assault, (3) information on available counseling to victims and (4) procedures for requesting counseling. Upon, an inmate's request, DOC is required to provide confidential on-site counseling through trained or experienced counselors.

DOC shall allow the distribution or posting of suitable materials on sexual assault or available counseling sponsored by community rape counseling centers or nonprofit organizations. DOC shall collect, on a quarterly and annual basis, statistical data of all known, reported or suspected incidents of sexual assault or related violence within the State prison system. DOC shall evaluate and classify male prisoners with respect to their probable risk for sexual assault or potential as sexual assault offenders. DOC shall take these ratings into consideration when making housing assignments. DOC shall ensure that inmates rated as vulnerable or highly vulnerable to be sexually assaulted or as potential sexual assault offenders are not housed in cells or rooms with four or less other inmates nor placed in showers at the same time, unless an inmate rated as vulnerable consents to the arrangement.

DOC shall provide annual reports to the Joint Legislative Commission on Governmental Operations. The bill becomes effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 754

Short Title: Unemp. Benefits Spousal Changes. (Public)

Sponsors: Senators Reeves; Kinnaird, Martin of Guilford, Miller, Rand, Wellons, and Winner.

Referred to: Children & Human Resources.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO ELIGIBILITY FOR UNEMPLOYMENT BENEFITS IN THE EVENT OF SPOUSAL RELOCATION OR SPOUSAL ABUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-14(1D) reads as rewritten:

"(1D) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's legally recognized spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall ~~serve a time certain disqualification for benefits for a period of five weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.~~ constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged."

Section 2. G.S. 96-14 is amended by adding a new subdivision to read:

"(1F) For the purposes of this Chapter, any claimant's leaving work, or discharge, as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or who has had a familial relationship with the claimant or minor child shall constitute good cause for leaving work, provided that the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the

General Statutes. Benefits paid on the basis of this section shall be noncharged."

Section 3. G.S. 96-9(c) reads as rewritten:

"(c) (1) Except as provided in subsection (d) of this section, the Commission shall maintain a separate account for each employer and shall credit ~~his~~ the employer's account with all voluntary contributions made by ~~him~~ the employer and all other contributions which ~~he~~ the employer has paid or is paid on ~~his~~ the employer's behalf, provided the Commission shall credit the account of each employer in an amount equal to eighty percent (80%) of all voluntary contributions paid with respect to periods prior to January 1, 1984, and of all other contributions paid with respect to periods between July 1, 1965, and December 31, 1983. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this Act shall be construed to grant any employer or individual in ~~his~~ the employer's service prior claims or rights to the amount paid by ~~him~~ the employer into the fund either on ~~his~~ the employer's own behalf or on behalf of such individuals.

(2) Charging of benefit payments. --

a. Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as

hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12(e)G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with ~~his~~ the claimant's work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which ~~he~~ the claimant was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2B) and (6A); ~~or~~ (vi) separation due to leaving for disability or health ~~condition~~ condition; or (vii) separation due to spousal relocation or spousal abuse as provided by G.S. 96-14(1D) and (1F) shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during ~~his~~ the individual's base period whether the employments were simultaneous or successive; provided, that such employer makes a written

request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(a)(3) shall not be charged to the account of the base period employer(s).

d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):

1. The benefits are paid for unemployment due directly to a major natural disaster, and
2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be charged to the experience rating account of any employer.

2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or

before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service.

(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish ~~him~~ the employer with a statement of all charges and credits thereto. At the same time the Commission shall notify each employer of ~~his~~ the employer's rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.

(4) Transfer of account. --

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of ~~his~~ the successor's right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor

employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision.

On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions. Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of ~~his~~ the successor's right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to

be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, ~~his~~ the successor employer's rate of contribution for the period from such date to the end of the then current contribution year shall be the same as ~~his~~ the successor employer's rate in effect on the date of such acquisition. If the successor was not an employer prior to the date of the acquisition of the business ~~he~~ the successor shall be assigned a standard rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which ~~he~~ the successor acquired the business of the predecessor; however, if such successor makes application for the transfer of the account within 60 days after notification by the Commission of his right to do so and the account is transferred, or meets the requirements for mandatory transfer, ~~he~~ the successor shall be assigned for the remainder of such year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard rate of contributions of two and seven-tenths percent (2.7%) and shall continue to pay at such rate until ~~he~~ the transferring employer qualifies for a reduction, reacquires the account ~~he~~ that the transferring employer transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3). However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) and shall continue to pay at such rate until ~~he~~ the transferring employer qualifies for a reduction, reacquires the account ~~he~~ that the transferring employer transferred or acquires the experience rating

account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

(5) In the event any employer subject to this Chapter ceases to be such an employer, ~~his~~ the employer's account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of G.S. 96-9(b)(2) of this Chapter.

(6) If the Commission finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subdivision shall apply only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subdivision shall not be construed to apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments."

Section 4. 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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April 21, 1997

Memorandum

To: Senate Children and Human Resources Committee

From: Carolyn D. Johnson, Committee Counsel

Re: SB 754 - Unemployment Benefits Spousal Changes.

Senate Bill 754 amends G.S. 96-14(1D) to provide that unemployment claimants shall have good cause for leaving work if they do so to accompany their legally recognized spouse who secures employment in a location too far removed for the claimant to continue employment. Benefits paid on this basis shall be noncharged. Currently, a spouse subject to these conditions are not eligible for unemployment benefits until after a five-week disqualification period.

Senate Bill 754 further amends G.S. 96-14 by adding a new subdivision (1F) to provide that unemployment claimants shall have good cause for leaving work if they or minor children in their custody are victims of domestic violence and there is an adjudication pursuant to Chapter 50B. Benefits paid on this basis shall be noncharged also.

G.S. 96-9(c) is amended to make a conforming change related to spousal relocation or abuse provisions and other gender neutral changes.

The bill is effective when it becomes law, and applies to newly initiated claims filed on or after September 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 636

Short Title: Public Health Authority Act. (Public)

Sponsors: Senators Hartsell; Forrester, Lucas, and Martin of Guilford.

Referred to: Children and Human Resources.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF LOCAL PUBLIC HEALTH AUTHORITIES, AS RECOMMENDED BY THE NORTH CAROLINA PUBLIC HEALTH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 1A. Public Health Authorities Authorized.

"**§ 130A-43. Title and purpose.**

(a) This Part shall be known and may be cited as the 'Public Health Authorities Act'.

(b) The purpose of this Part is to provide an additional and alternative method for counties to provide public health services. This Part shall not be regarded as repealing any powers now existing under any other law, either general, special, or local.

(c) It is the policy of the General Assembly that Public Health Authorities should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end the provisions of this Part shall be broadly construed, and grants of powers shall be construed to include any powers that are reasonably expedient to the exercise of power.

"**§ 130A-44. Definitions.**

As used in this Part, unless otherwise specified:

(1) 'Authority service area' means area within the boundaries of the authority as provided for in G.S. 130A-45.4.

(2) 'Board' means a public health authority board created under this Part.
(3) 'Department' means the Department of Environment, Health, and Natural Resources.
(4) 'County board of commissioners' means the legislative body charged with governing the county.
(5) 'County' means the county which is, or is about to be, included in the territorial boundaries of a public health authority when created hereunder.
(6) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.
(7) 'Government' means the State and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
(8) 'Public health authority' means a public body and a body corporate and politic organized under the provisions of this Part.
(9) 'Public health facility' means any one or more buildings, structures, additions, extensions, improvements, or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for providing public health services; and includes, without limitation, local public health departments or centers; public health clinics and outpatient facilities; nursing homes, including skilled nursing facilities and intermediate care facilities, adult care homes for the aged and disabled; public health laboratories; administration buildings, central service and other administrative facilities; communication, computer and other electronic facilities; pharmaceutical facilities; storage space; vehicular parking lots and other such public health facilities, customarily under the jurisdiction of or provided by public health departments, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.
(10) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
(11) 'State' means the State of North Carolina.

"**§ 130A-45. Creation of a public health authority.**

(a) A public health authority may be created whenever a county board of commissioners finds and adopts a resolution finding that it is in the interest of the

public health and welfare to create a public health authority to provide public health services as required under G.S. 130A-34.

(b) A public health authority including more than one county may be formed upon joint resolution of the county boards of commissioners and local boards of health having jurisdiction over each of the counties involved.

(c) After the adoption of a resolution creating a public health authority, a public health authority board shall be appointed in accordance with G.S. 130A-45.1.

(d) A county may join a public health authority upon joint resolution of the boards of commissioners and local boards of health having jurisdiction over each of the counties involved.

(e) A public health authority board shall govern the public health authority. All powers, duties, functions, rights, privileges, or immunities conferred on the public health authority may be exercised by the authority board.

(f) The public health authority board shall absorb the functions, assets, and liabilities of the county or district boards of health, and that board is dissolved.

(g) For the purpose of Chapter 159 of the General Statutes, a public health authority is a public authority as defined in G.S. 159-7(b)(10).

(h) Before adopting a resolution creating a public health authority, the county board of commissioners shall hold a public hearing with notice published at least 10 days before the hearing.

(i) For the purposes of Article 9 of Chapter 131E of the General Statutes, a public health authority is a person as defined in G.S. 131E-176(19).

"**§ 130A.45.1. Membership of the Public Health Authority Board.**

(a) A public health authority board shall be the policy-making, rule-making, and adjudicatory body for a public health authority and shall be composed of no fewer than seven members and no more than nine members; except that in an authority comprising two or more counties, the board shall be composed of no more than 11 members.

(b) In a single county authority, the county board of commissioners shall jointly appoint the members of the board; in an authority comprising two or more counties, the chairman of the county board of commissioners of each county in the authority shall appoint one county commissioner to the authority board and these members shall jointly appoint the other members of the board.

(c) The members of the board shall include:

(1) At least one physician licensed under Chapter 90 of the General Statutes to practice medicine in this State;

(2) At least one county commissioner or the commissioner's express designee from each county in the authority;

(3) At least three licensed or registered professionals from any of the following professionals: dentistry, optometry, veterinary science, nursing, pharmacy, engineering, accounting, or health care administration; and

(4) At least four members may be selected from the general public or from the professions listed in subdivision (3) of this subsection.

(d) Except as provided in this subsection, members of the board shall serve terms of three years. Two of the original members shall serve terms of one year, and two of the original members shall serve terms of two years.

(e) Any member who is a county commissioner serves on the board in an ex officio capacity.

(f) Whenever a county shall join or withdraw from an existing public health authority, the board shall be dissolved and a new board shall be appointed as provided in subsection (b) of this section.

(g) Vacancies shall be filled within 120 days for any unexpired portion of a term.

(h) A chair shall be elected annually by a board. The local health director shall serve as secretary to the board.

(i) A majority of the members shall constitute a quorum.

(j) A member may be removed from office by the board for any of the following:

(1) Commission of a felony or other crime involving moral turpitude.

(2) Violation of a State law governing conflict of interest.

(3) Violation of a written policy adopted by the county board of commissioners of each county in the authority.

(4) Habitual failure to attend meetings.

(5) Conduct that tends to bring the office into disrepute.

(6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(k) Board members shall receive no compensation for their services, but they shall be entitled to reimbursement for subsistence and travel expenses incurred in the discharge of their duties.

(l) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

"**§ 130A-45.2. Dissolution of a public health authority.**

(a) Whenever the board of commissioners of each county constituting a public health authority determines that the authority is not operating in the best health interests of the authority service area, they may direct that the authority be dissolved. In addition, whenever a board of commissioners of a county which is a member of an authority determines that the authority is not operating in the best health interests of that county, it may withdraw from the authority. Dissolution of an authority or withdrawal from the authority by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a) of this section, no public health authority shall be dissolved without prior written notification to the Department.

(c) Any budgetary surplus available to a public health authority at the time of its dissolution shall be distributed to those counties comprising the authority on the same pro rata basis that the counties appropriated and contributed funds to the authority's budget during the current fiscal year. Distribution to the counties shall be determined

on the basis of an audit of the financial record of the authority. The public health authority board shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of an authority withdraw from the authority.

(d) Upon dissolution or withdrawal, all rules adopted by the board continue in effect until amended or repealed by the new authority board or boards of health.

"**§ 130A-45.3. Powers and duties of authority board.**

(a) A public health authority shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers to:

(1) Protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose. In adopting rules to protect and promote the public health, a public health authority board may take into account factors other than public health that may enhance the reasonableness of the rule in light of the health risk addressed.

(2) Construct, equip, operate, and maintain public health facilities.

(3) Use property owned or controlled by the authority.

(4) Acquire real or personal property, including existing public health facilities, by purchase, grant, gift, devise, lease, condemnation, or otherwise.

(5) Establish a fee schedule for services received from public health facilities and make services available regardless of ability to pay.

(6) Appoint a public health authority director to serve at the pleasure of the authority board.

(7) Establish a salary plan which shall set the salaries for employees of the area authority.

(8) To adopt and enforce a professional reimbursement policy which may include the following provisions: (i) require that fees for the provision of services received directly under the supervision of the public health authority shall be paid to the authority, (ii) prohibit employees of the public health authority from providing services on a private basis which require the use of the resources and facilities of the public health authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the public health authority director.

(9) Delegate to its agents or employees any powers or duties as it may deem appropriate.

(10) Employ its own counsel and legal staff.

(11) Adopt, amend, and repeal bylaws for the conduct of its business.

(12) Enter into contracts for necessary supplies, equipment, or services for the operation of its business.

(13) Act as an agent for the federal, State, or local government in connection with the acquisition, construction, operation, or management of a public health facility, or any part thereof.

(14) Insure the property or the operations of the authority against risks as the authority may deem advisable.

(15) Sue and be sued.

(16) Accept donations or money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation, or society.

(17) Appoint advisory boards, committees, and councils composed of qualified and interested residents of the authority service area to study, interpret, and advise the public health authority board.

(b) A public health authority shall have the power to establish and operate health care networks and may contract with or enter into any arrangement with other public health authorities or local health departments of this or other states, federal, or other public agencies, or with any person, private organization, or nonprofit corporation or association for the provision of public health services, including managed health care activities; provided, however, that for the purposes of this subsection only, a public health authority shall be permitted to and shall comply with the requirements of Article 67 of Chapter 58 of the General Statutes to the extent that such requirements apply to the activities undertaken by the public health authority pursuant to this subsection. The public health authority may pay for or contribute its share of the cost of any such contract or arrangement from revenues available for these purposes, including revenues arising from the provision of public health services.

(c) A public health authority may lease any public health facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The authority will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(d) A public health authority shall not sell nor convey any rights of ownership the county has in any public health facility, including the buildings, land and equipment associated with the facility, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land or surplus equipment by an authority to any corporation or other business entity operated for profit. For purposes of this subsection, 'surplus' means any building, land or equipment which is not required for use in the delivery of public health care services by a public health facility at the time of the sale or conveyance of ownership rights.

(e) A public health authority may lease any public health facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272.

(f) A public health authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific public health facility or

facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(g) An authority may contract to insure itself and any of its board members, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the authority or of any of its board members, agents, or employees when acting within the scope of their authority and the course of their employment. The board shall determine what liabilities and what members, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the authority's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the authority, an insurer waives any defense based upon the governmental immunity of the authority.

(h) If an authority has waived its governmental immunity pursuant to subsection (g) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the authority or any of its board members, agents, or employees, occurring in the exercise of a governmental function, may sue the authority for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (g) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the authority has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance as authorized by subsection (g) of this section, the liability of an authority for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

"**§ 130A-45.4. Appointment of a public health authority director.**

(a) A public health authority board, after consulting with the appropriate county board or boards of commissioners, shall appoint a public health authority director.

(b) All persons who are appointed to the position of public health authority director must possess minimum education and experience requirements for that position, as follows:

(1) A medical doctorate; or

(2) A masters degree in Public Health Administration, and at least one year of employment experience in health programs or health services; or

(3) A masters degree in a public health discipline other than public health administration, and at least three years of employment experience in health programs or health services; or

(4) A masters degree in public administration, and at least two years of experience in health programs or health services; or

(5) A masters degree in a field related to public health, and at least three years of experience in health programs or health services; or

(6) A bachelors degree in public health administration or public administration and at least three years of experience in health programs or health services.

(c) Before appointing a person to the position of public health authority director under subdivision (a)(5) of this section, the authority board shall forward the application and other pertinent materials of such candidate to the State Health Director. If the State Health Director determines that the candidate's masters degree is in a field not related to public health, the State Health Director shall so notify the authority board in writing within 15 days of the State Health Director's receipt of the application and materials, and such candidate shall be deemed not to meet the education requirements of subdivision (a)(5) of this section. If the State Health Director fails to act upon the application within 15 days of receipt of the application and materials from the authority board, the application shall be deemed approved with respect to the education requirements of subdivision (a)(5) of this section, and the authority board may proceed with the appointment process.

(d) The State Health Director shall review requests of educational institutions to determine whether a particular masters degree offered by the requesting institution is related to public health for the purposes of subdivision (a)(5) of this section. The State Health Director shall act upon such requests within 90 days of receipt of the request and pertinent materials from the institution, and shall notify the institution of its determination in writing within the 90-day review period. If the State Health Director determines that an institution's particular masters degree is not related to public health, the State Health Director shall include the reasons therefor in his written determination to the institution.

(e) When an authority board fails to appoint a public health authority director within 60 days of the creation of a vacancy, the State Health Director may appoint an authority director to serve until the authority board appoints an authority director in accordance with this section.

"**§ 130A-45.5. Powers and duties of a public health authority director.**

(a) The public health authority director is an employee of the authority board and shall serve at the pleasure of the authority board.

(b) An authority health director shall perform public health duties prescribed by and under the supervision of the public health authority board and the Department and shall be employed full time in the field of public health.

(c) An authority health director shall have the following powers and duties:

(1) To administer programs as directed by the public health authority board;

(2) To enforce the rules of the public health authority board;

(3) To investigate the causes of infectious, communicable, and other diseases;

(4) To exercise quarantine authority and isolation authority pursuant to G.S. 130A-145;

(5) To disseminate public health information and to promote the benefits of good health;

(6) To advise local officials concerning public health matters;

(7) To enforce the immunization requirements of Part 2 of Article 7 of this Chapter;

(8) To examine and investigate cases of venereal disease pursuant to Parts 3 and 4 of Article 6 of this Chapter;

(9) To examine and investigate cases of tuberculosis pursuant to Part 5 of Article 6 of this Chapter;

(10) To examine, investigate, and control rabies pursuant to Part 6 of Article 6 of this Chapter;

(11) To abate public health nuisances and imminent hazards pursuant to G.S. 130A-19 and G.S. 130A-20;

(12) To employ, discipline, and dismiss employees of the public health authority.

(d) Authority conferred upon a public health authority director may be exercised only within the county or counties comprising the public health authority.

"**§ 130A-45.6. Boundaries of the authority.**

A public health authority may provide or contract to provide public health services and to acquire, construct, establish, enlarge, improve, maintain, own, or operate, and contract for the operation of any public health facilities outside the territorial limits, within reasonable limitation, of the county or counties creating the authority, but in no case shall a public health authority be held liable for damages to those outside the territorial limits of the county or counties creating the authority for failure to provide any public health service.

"**§ 130A-45.7. Medical review committee.**

(a) 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.

(b) 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, '"Public records" defined', and shall not be subject to discovery or introduction into evidence in any civil action against a public health authority or a provider of professional health services which results from matters which 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 or a person who testifies before the committee may testify in a civil action but cannot be asked about his testimony before the committee or any opinions formed as a result of the committee hearings.

"**§ 130A-45.8. Confidentiality of patient information.**

(a) Medical records compiled and maintained by public health authorities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes.

(b) Charges, accounts, credit histories, and other personal financial records compiled and maintained by public health authorities in connection with the admission, treatment, and discharge of individual patients are not public records as defined by Chapter 132 of the General Statutes.

"**§ 130A-45.9. Confidentiality of personnel information.**

(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees, and the files of applicants for employment maintained by a public health authority are not public records as defined by Chapter 132 of the General Statutes.

(b) The following information with respect to each employee of a public health authority is a matter of public record: name; age; date of original employment or appointment; beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public health facility shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

(c) Information regarding the qualifications, competence, performance, character, fitness, or conditions of appointment of an independent contractor who provides health care services under a contract with a public health authority is not a public record as defined by Chapter 132 of the General Statutes. Information regarding a hearing or investigation of a complaint, charge, or grievance by or against an independent contractor who provides health care services under a contract with a public health authority is not a public record as defined by Chapter 132 of the General Statutes. Final action making an appointment or discharge or removal by a public health authority having final authority for the appointment or discharge or removal shall be taken in an open meeting, unless otherwise exempted by law. The following information with respect to each independent contractor of health care

services of a public health authority is a matter of public record: name; age; date of original contract; beginning and ending dates; position title; position descriptions; and total compensation of current and former positions; and the date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification.

"**§ 130A-45.10. Confidentiality of credentialing information.**

Information acquired by a public health authority or by persons acting for or on behalf of a public health authority in connection with the credentialing and peer review of persons having or applying for privileges to practice in a public health facility is confidential and is not a public record under Chapter 132 of the General Statutes; provided that information otherwise available to the public shall not become confidential merely because it was acquired by the authority or by persons acting for or on behalf of the authority.

"**§ 130A-45.11. Confidentiality of competitive health care information.**

Information relating to competitive health care activities by or on behalf of public health authorities shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a public health authority shall be a public record unless otherwise exempted by law."

Section 2. (a) G.S. 130A-2(4) reads as rewritten:

"(4) 'Local board of health' means a district board of health or a public health authority board or a county board of health."

(b) G.S. 130A-2(5) reads as rewritten:

"(5) 'Local health department' means a district health department or a public health authority or a county health department."

Section 3. G.S. 105-164.14(c)(9) of the General Statutes reads as written:

"(9) A ~~district health department.~~ district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes."

Section 4. G.S. 128-37 of the General Statutes reads as rewritten:

"**§ 128-37. Membership of employees of ~~district health departments.~~ district health departments, or public health authorities.**

Under such rules and regulations as the Board of Trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the governing board of any public health authority, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department."

Section 5. G.S. 153A-77.1 of the General Statutes reads as rewritten:

"**§ 153A-77.1. Single portal of entry.**

A county may develop for human services a single portal of entry, a consolidated case management system, and a common data base; provided that if the county is part

of a district health department or multicounty public health authority or a ~~multi-county~~ multicounty area mental health, developmental disabilities, and substance abuse authority, such action must be approved by the district board of health or public health authority board or the area mental health, developmental disabilities, and substance abuse board to affect any matter within the jurisdiction of that board. Nothing in this section shall be construed to abrogate a patient's right to confidentiality as provided by law."

Section 6. G.S. 153A-149(13) of the General Statutes reads as rewritten:

"(13) Health. -- To provide for the county's share of maintaining and administering services offered by or through the ~~county or district~~ local health department."

Section 7. G.S. 106-266.17 reads as rewritten:

"**§ 106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.**

The making of marketing agreements between producers' cooperative marketing associations and distributors and producer- distributors under the provisions of this Article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this Article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this Article are hereby repealed to the extent necessary for the full operation of this Article. No provisions of this Article shall be deemed in conflict with Articles 28 and 28A of Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict with the authority granted to ~~county, city-county and district~~ local boards of health by G.S. 130-19, 130-20, 130-66, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the Department of Human Resources by G.S. 130-3 to make sanitary inquiries and investigations."

Section 8. G.S. 88-28.1 reads as rewritten:

"**§ 88-28.1. Restraining orders against persons engaging in illegal practices.**

If it is found that any licensed cosmetologist, cosmetic art shop, or other person subject to the provisions of this Chapter is violating any rules and regulations adopted by the State Board of Cosmetic Art Examiners or any provisions of G.S. 88-28, then the Department of Human Resources, any ~~county or district~~ local health director, or the State Board of Cosmetic Art Examiners shall give notice to the person of the violation and apply to the superior court for injunctive relief to restrain such person from continuing such illegal practices. If, upon such application, it shall appear to the court that such person has violated and/or is violating any of the said rules and regulations or any provisions of Chapter 88, section 28, of the General Statutes of North Carolina G.S. 88-28, the court may issue an order restraining any further violations thereof. All such actions for injunctive relief shall be governed by the provisions of Article 37 of Chapter 1 of the General Statutes: Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been

or may be instituted under any of the provisions of this Chapter. Actions under this section shall be commenced in the county in which the respondent resides or has his principal place of business or in which the alleged acts occurred."

Section 9. G.S. 143-215.7 reads as rewritten:

"**§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.**

This Article shall not be construed as amending, repealing, or in any manner abridging or interfering with the provisions of Article 10 of Chapter 130A of the General Statutes relating to the control of public water supplies; nor shall the provisions of this Article be construed as being applicable to or in anywise affecting the authority of the Department to control the sanitary disposal of sewage as provided in Article 11 of Chapter 130A of the General Statutes, or as affecting the powers, duties and authority of ~~city, county, county-city and district~~ local health departments ~~usually referred to as local health departments~~ or as affecting the charter powers, or other lawful authority of municipal corporations, to pass ordinances in regard to sewage disposal."

Section 10. G.S. 130A-140 reads as rewritten:

"**§ 130A-140. Local health directors to report.**

A local health director shall report to the Department all cases of diseases or conditions or laboratory findings of residents of the jurisdiction of the local health department which are reported to the local health director pursuant to this Article. A local health director shall report all other cases and laboratory findings reported pursuant to this Article to the local health director of the ~~county or district~~ county, district or authority where the person with the reportable disease or condition or laboratory finding resides."

Section 11. G.S. 120-196 reads as rewritten:

"**§ 120-196. (See editor's note) Commission duties.**

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

(1) Determine whether the public health services currently available in each ~~county or district~~ local health department conform to the mission and essential services established under G.S. 130A-1.1;

(2) Study the workforce needs of each ~~county or district health~~ local department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in ~~county and district~~ local health departments;

(3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;

(4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current

structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities;

(5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose; and

(6) Study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current ~~county and district~~ local health departments should be organized into a network of larger multidistrict community administrative units. In making its recommendations on this study, the Commission shall consider whether the State should establish minimum populations for local health departments, and if so, shall recommend the number of and configuration for these multicounty administrative units and shall recommend a series of incentives to ease county transition into these new arrangements."

Section 12. This act becomes effective January 1, 1998, and applies to contracts and agreements entered into on or after that date.

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April 28, 1997

MEMORANDUM

TO: Members of the Senate Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: Senate Bill 636: **AN ACT TO AUTHORIZE THE ESTABLISHMENT OF LOCAL PUBLIC HEALTH AUTHORITIES.**
Primary Sponsor: Senator Hartsell

The proposed legislation will allow an alternative mechanism for local governments to provide public health services by establishing a public health authority. The authority will be governed by a board comprised of county commissioners, health professionals, and members of the public. Public health authorities established pursuant to the act will have all of the powers required to operate a business entity without the need for any further authorization from the county or counties which established the authority. A public health authority board will appoint a local authority director who will serve at the pleasure of the authority board. **The authority, its board and the authority director shall assume the same governmental powers and duties currently held by local health boards, health directors and district or county health departments.**

Creation of a Public Health Authority

A public health authority may be created by the county board of commissioners by the adoption of a resolution finding that it is in the interest of the public's health and welfare to do so. Public health authorities comprising more than one county may be formed and counties may join existing public health authorities upon joint resolution by the boards of county commissioners and local boards of health of each of the counties involved.

Dissolution of a Public Health Authority

An public health authority may be dissolved whenever the board of county commissioners of each county constituting the authority directs it to be dissolved and the Department of Environment, Health and Natural Resources is notified in writing. In addition, a member county of an authority

may leave the authority if that county's board of county commissioners so directs it to. However, the withdrawal shall not be effective until the end of the fiscal year.

At the time of dissolution of a multi-county authority, an audit must be conducted to ensure that assets and liabilities are distributed to the member counties on the same pro rata basis that the counties appropriated and contributed funds to the authority's budget during the current fiscal year.

The Public Health Authority Board

The public health authority will be governed by an authority board. An authority consisting of a single county shall have a board of no fewer than seven and no more than nine members, which must include a member of the board of county commissioners and representatives of various professional groups, jointly appointed by the county board of commissioners. An authority comprising two or more counties shall have a board with no fewer than 7 and no more than 11 members. In a multi-county authority, each county board of commissioners shall appoint one county commissioner to the board and these members shall appoint the other members. As the governing body for the authority, the board will absorb the functions of the county or district boards of health, and that board is dissolved.

The terms of commissioner members on the authority board are concurrent with their terms as county commissioners. Other board members serve three-year terms, except that board members may be removed at any time for reasons specified in the Act.

Members of the board elect the board's chair to a one-year term of office. County commissioners are eligible to serve as the board's chair.

Who may serve on the authority board? The authority board membership must include:

- at least one county commissioner
- at least one licensed physician
- at least three members selected from a list of professions
- at least four members may be selected from the public or from the list of professions

What is the role of the authority board?

As noted above, the authority board exercises the powers and duties conferred on the public health authority under the Act. The authority board is a public body and a corporate body, and is authorized to exercise all powers necessary and appropriate to carry out and effectuate the purposes and provisions of the Act.

Powers of the Authority Include:

- Broad power to establish and operate public health facilities
- Explicit power to establish and operate health care networks
- Public powers: It will have all the powers traditionally exercised by local board of health

- Appointment of a public health authority director, who will serve at the pleasure of the board
- Establish a salary plan for employees of the authority

Sections 2 through 11 contain conforming changes.

Section 12 is the technical change necessitating the proposed committee substitute. The original bill specified that, in adopting rules to protect the public's health, the authority board may take into account factors other than public health that may enhance the reasonableness of the rule in light of the health risk addressed. The PCS applies this language to G.S. 130A-39, the powers of local boards of health, and then cross references this amended statute in the powers of the authority board. See page 6, lines 15-18; and page 18, lines 11-14.

The act becomes effective January 1, 1998, and applies to contracts and agreements entered into on or after that date.

S636-rmsm-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 484*

Short Title: Vital Records Access/AB. (Public)

Sponsors: Senators Lucas; Conder, Dannelly, Forrester, Gulley, Hartsell, Jordan, Kinnaird, and Shaw of Cumberland.

Referred to: Children & Human Resources.

March 25, 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 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. 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.

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April 14, 1997

MEMORANDUM

TO: Senate Human Resources Committee

FROM: John Young, Committee Staff

RE: **Senate Bill 484-Vital Records Access**
Senator Lucas

Senate Bill 484 changes the vital records (birth, death, marriage) requirements in the following ways:

(1) Amends G.S. 130A-93(b) to declare that birth records that show names of parents and children, parent's addresses and social security numbers are not public records as defined in Chapter 162.

(2) Vital records are State property and must be disposed of in accordance with the North Carolina Archives and History Act (Chapter 121).

(3) Lists those persons to whom the State Registrar and register of deeds may issue a certified copy of a vital record. (direct ancestor or descendent, stepparent, or funeral director)

(4) Amends G.S. 130A-93(e) to allow copies or abstracts of any database that contains individual-specific health or medical, birth data may be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who intends to use the information for medical research.

(5) When the State vital records database is used by local agencies the local the local agency shall charge a $10 fee, $5 of which shall be for the State to create and maintain a fully automated vital records database.

(6) The fee for a copy of a computer or microfilm database shall not exceed the cost of making and providing the copy.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 484*
Proposed Committee Substitute S484-PCS1729

Short Title: Vital Records Access/AB. (Public)

Sponsors:

Referred to:

March 25, 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 Chapter 130A-99 and 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 shall be State property and shall be disposed of 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page _____, line _____

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 _____

5 _____

6 _____

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_____

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12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED BY THE COMMITTEE ON CHILDREN & HUM. RES.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

COMMITTEE CLERK

VISITOR REGISTRATION SHEET

Children + Human Resources — 4/29/97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Bradley	NCCBC
Cathy Brown	NCCBC
Wayne Williams	OSBM
Randy Brady	Orange Co. Adult Care Adv. Com.
Starleen Scott Robbins	DMH/DD/SAS
Whitney Obrig	DMHDDSAS
Jan Ellington	DEHNR
Deborah Rowe	NC Public Health Assoc.
Dr Jeff Sherlin	DEHNR
Myrna Miller	NASW-NC
[illegible]	APNC
Rickie Street	DPI

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	DEHNR/DEH
Betsy Kane	self
Tommy Worth	Carolinas Health Care System
[illegible]	Bowe + Assoc / LTC
Lou - Wilson	LTC
Pat Yancey	APPCNC/SCSL
[illegible]	DHR
[illegible]	DEHNR
Priscilla Swindell	AARP-CCTF
[illegible]	RRC
Brenda Johnson	DEHNR/DEH
Malcolm Blalock	DEHNR / DEH

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Whitaker	ESC
Angie McMillan	DHR
DANE BRUTON	DHR
Craig Greene	DSD/HH
James Scavell	DSD/HH
Kim Stoll	DSD/HH
Brenda Aron	DSD/HH & Deaf consumer
LINDA NELSON	DSD/HH & deaf consumer
Len Aron	DSD/HH
Paul W. Schreyer	DSD/HH & Deaf consumer
Pat Stivland	DSD/HH & Deaf consumer

AGENDA

April 30, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

SB1047 Amend Psychology Practice Act	Senator Lucas
SB889 American Sign Language	Senator Martin
SB307 Independent Study/DHR Reorganization	Senator Martin
SB962 Vol. Commitment/Mother on Drugs	Senator Martin
SB1016 Dir. Pay/Subs. Abuse Prof.	Senator Martin
SB876 Criminal Checks/Contract Agencies	Senator Forrester
SB851 Limit Provisional License	Senatore Kinnaird
SB924 Criminal Records Checks/DHR	Senator Odom
SB1023 Family foster Home Standards	Senator Foxx
SB757 Advance Instr./Mental Health	Senator Miller
SB1006 Expedite Parental Rights Termination	Senator Gulley

Sergeant-at-Arms: Christy Traylor
Mary Perry

Next Meeting Scheduled for Wednesday, May 7, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Monday, April 30, 1997

The Senate Committee on Children & Human Resources met at 8:15 a.m. on Tuesday, April 30, 1997 in Room 423 of the State Legislative Office Building.

Fourteen (14) members of the Committee were present.

Senator Jeanne H. Lucas, Chairman of the Committee, called the meeting order.

Senate Bill 889 entitled American Sign Language was presented by its sponsor, Senator Martin of Guilford. Senator Martin explained the bill After some discussion of the bill it was decided it would be reported out as favorable.

Senate Bill 307 entitled Independent Study/DHR reorganization, was presented by its sponsor Senator Martin of Guilfored. Senator Martin explained the bill. After discussion of the bill it received a favorable report.

Senate Bill 1006 entitled Dir. Pay/Subs. Abuse Prof., was presented by its sponsor Senator ~~Gully~~ Martin, Senator ~~Gully~~ Martin explained the bill. After discussion of the the bill ~~failed~~ it received a favorable report.

Senate Bill 876 entitled Criminal Checks/Contract Agencies, was presented by its sponsor Senator Forrester. Senator Forrester explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

Senate Bill 962 entitled Vol. commitment/Mother on Drugs, was presented by its sponsor Senator Martin of Guilford. Senator Martin explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

Senate Bill 1023 entitled Family Foster Home Home Standards, was presented by its sponsor Senator Foxx. Senator Foxx explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to committee substitute bill.

Senate Bill 757 entitled Advance Instr./Mental Health, was presented by its sponsor Senator Miller. Senator Miller explained the bill. After discussion of

the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to committee substitute bill.

Senate Bill 1006 entitled Expedite Parental Rights Termination was presented by its sponsor Senator ~~Wellons~~ Gulley. Senator ~~Wellons~~ Gulley asked the committee to reconsider the bill. The bill was referred to the Select Committee of the Court Future of the.

Senate Bill 924 entitled Criminal Record Checks/DHR, was presented by its sponsor Senator Odom. Senator Odom explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to committee substitute bill.

Senate Bill 851 entitled Limit Provisional License, was presented by its sponsor Senator Kinnaird. Senator Kinnaird explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to committee substitute bill.

The business being completed, the meeting was adjourned. The next scheduled meeting will be announced.

Bernadette David-Yerumo

Bernadette David-Yerumo, Committee Clerk

Jeanne H. Lucas

Senator Jeanne H. Lucas, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, April 30, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **876** Criminal Checks/Contract Agencies.
Sequential Referral: None
Recommended Referral: None

S.B. **889** American Sign Language.
Sequential Referral: None
Recommended Referral: None

S.B. **962** Vol. Commitment/Mother on Drugs.
Sequential Referral: None
Recommended Referral: None

S.B. **1016** Dir. Pay/Subs. Abuse Prof.
Sequential Referral: None
Recommended Referral: None

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

S.B. **924** Criminal Record Checks/DHR.
Draft Number: PCS8691
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Wednesday, April 30, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

S.B. **307** DHR Reorganization.

Draft Number:	PCS1802
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Thursday, May 01, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

S.B. **757** Advance Instr./Mental Health.

Draft Number:	PCS2749
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, April 30, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

S.B. **851** Limit Provisional License.

Draft Number:	PCSA751
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1023** Family Foster Home Standards.

Draft Number:	PCS2750
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 889

Short Title: American Sign Language. (Public)

Sponsors: Senators Martin of Guilford and Cooper.

Referred to: Children & Human Resources.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE AMERICAN SIGN LANGUAGE (ASL) AS THE MODERN LANGUAGE OF CHOICE FOR MANY DEAF, HARD-OF-HEARING AND HEARING NORTH CAROLINA CITIZENS.

Whereas, American Sign Language (ASL) is one of the top four widely used languages in the United States and Canada; and

Whereas, North Carolina has over 50,000 deaf citizens, most of whom use ASL as their primary language; and

Whereas, ASL has met the accepted linguistic criteria to qualify it as a legitimate language in that it has a system of arbitrary symbols, grammatical signals, and syntax, it has a community of users, and it has undergone historical changes; and

Whereas, more than one-half of the state legislatures in the United States have recognized and accepted American Sign Language as a language; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. A new Chapter is added to the General Statutes to read as follows:

"Chapter 103A.

"Recognition of American Sign Language.

"**§ 103A-1. Definitions.**

The following definitions shall apply in this Chapter:

(1) 'American Sign Language (ASL)' means a visual language that is a separate and distinct language involving the hands, arms, facial markers, and body movements to convey grammatical information.

(2) 'Deaf people' refers to people who use American Sign Language as their primary language to communicate in their respective cultural groups.

(3) 'Deaf' means the inability to hear and/or understand oral communications, with or without assistance of amplification devices.

(4) 'Hard of hearing' means permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(5) 'ASLTA' means American Sign Language Teachers Association, a national professional organization located at 814 Thayer Avenue, Silver Spring, Maryland 20910. The ASLTA provides an evaluation and certification for the ASL teachers.

"§ 103A-2. Levels of certifications for American Sign Language teachers.

The ASLTA provides an evaluation and certification for the ASL teachers. There are three levels of certification in the ASLTA certification process that reflect stages of experience, growing knowledge, and skills in teaching American Sign Language.

(1) Provision. -- Certified teachers have met minimum requirements as specified in the standards section of the ASLTA Certification Procedures and Standards. The teacher, certified at the Provisional level, has demonstrated proficiency in ASL and basic knowledge about ASL teaching, including developing course outlines and lesson planning.

(2) Qualified. -- Certified teachers have met all requirements as specified in the standards section of the ASLTA Certification Procedures and Standards. The teacher certified at the Qualified level has demonstrated knowledge of second language teaching methodology, language activities, evaluation, and knowledge of ASL linguistics.

(3) Professional. -- Certified teachers have met all requirements as specified in the standards section of the ASLTA Certification Procedures and Standards. The teacher certified at the Professional level has demonstrated the highest level of knowledge and skills in teaching ASL. These include knowledge of curriculum development, evaluation, linguistics, and theoretical and contemporary issues in the field of ASL teaching.

"§ 103A-3. American Sign Language instruction.

(a) American Sign Language may be offered in the public schools, four-year State universities, colleges, and community colleges as a modern language with credit for individuals attending, and in the State service providers as a modern language for noncredit.

(b) The minimum requirement for ASL teachers in the public schools and in The University of North Carolina is at least a college degree in teaching ASL or a degree in a related field of deafness with an ASLTA professional level certification.

(c) The minimum requirement for ASL teachers in the Community College System is at least an ASLTA Qualified level certification.

(d) The minimum requirement of ASL teachers in State service providers including the State schools for the deaf is at least an ASLTA Provisional level certification."

Section 2. This act is effective when it becomes law. G.S. 103A-3, as enacted by Section 1 of this act, applies to persons teaching American Sign Language on and after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 307

Short Title: Independent Study/DHR Reorganization. (Public)

Sponsors: Senator Martin of Guilford.

Referred to: Children & Human Resources.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE INDEPENDENT STUDY COMMISSION ON THE REORGANIZATION OF THE DEPARTMENT OF HUMAN RESOURCES.

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 1

SENATE BILL 1016

Short Title: Dir. Pay/Subs. Abuse Prof. (Public)

Sponsors: Senator Martin of Guilford.

Referred to: Appropriations.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DIRECT PAYMENT OF CERTIFIED SUBSTANCE ABUSE PROFESSIONALS UNDER HEALTH INSURANCE POLICIES AND PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-50-30 reads as rewritten:

"**§ 58-50-30. Discrimination forbidden; right to choose services of optometrist, podiatrist, certified clinical social worker, certified substance abuse professional, dentist, chiropractor, psychologist, pharmacist, certified fee-based practicing pastoral counselor, or advanced practice registered nurse.**

(a) Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by Articles 50 through 55 of this Chapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for payment of or reimbursement for any service rendered in connection with a condition or complaint which is within the scope of practice of a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly certified substance abuse professional, a duly licensed psychologist, a duly licensed pharmacist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such services, whether such services be performed by a duly licensed physician, a duly licensed optometrist, a

duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly certified substance abuse professional, a duly licensed psychologist, a duly licensed pharmacist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, notwithstanding any provision contained in such policy. Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability which is within the scope of practice of a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly certified substance abuse professional, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such disability whether such disability be certified by a duly licensed physician, a duly licensed optometrist, a duly licensed podiatrist, a duly licensed dentist, a duly licensed chiropractor, a duly certified clinical social worker, a duly licensed psychologist, a duly certified fee-based practicing pastoral counselor, or an advanced practice registered nurse, notwithstanding any provisions contained in such policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of such services notwithstanding any provision to the contrary in any other statute.

Whenever any policy of insurance provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of his practice as defined in G.S. 90-151 unless a comparable limitation is imposed on such medically necessary treatment if performed or authorized by any other duly licensed physician.

(b) For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Service Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

(c) For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2) and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

(c1) For purposes of this section, a 'duly certified fee-based practicing pastoral counselor' shall be defined only to include fee-based practicing pastoral counselors certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.

(c2) For purposes of this section, a 'duly certified substance abuse professional' is a person certified by the North Carolina Substance Abuse Professionals Certification Board pursuant to Article 5C of Chapter 90 of the General Statutes.

(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

(e) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

(1) The service performed is within the lawful scope of practice of the pharmacist;

(2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;

(3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and

(4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service."

Section 2. G.S. 58-65-1 reads as rewritten:

"**§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term 'hospital service plan' as used in this Article and Article 66 of this Chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term 'medical service plan' as used in this Article and Article 66 of this Chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician, except that in any plan in any policy of insurance governed by this Article and Article 66 of this Chapter that includes services which are within the scope of practice of a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, a duly licensed pharmacist, an advanced practice registered nurse, a duly certified clinical social worker, a duly certified substance abuse professional, a duly certified fee-based practicing pastoral counselor, and a duly licensed physician, then the insured or beneficiary shall have the right to choose the provider of the care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed optometrist, a duly licensed chiropractor, a duly licensed psychologist, a duly licensed pharmacist, an advanced practice registered nurse, a duly certified clinical social worker, a duly certified substance abuse professional, a duly certified fee-based practicing pastoral counselor, or a duly licensed physician notwithstanding any provision to the contrary contained in such policy. The term 'medical services plan' also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

(b) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

(1) The service performed is within the nurse's lawful scope of practice;

(2) The policy currently provides benefits for identical services performed by other licensed health care providers;

(3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;

(4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and

(5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision.

(b1) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

(1) The service performed is within the lawful scope of practice of the pharmacist;

(2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;

(3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and

(4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service.

(c) For purposes of this section, an 'advanced practice registered nurse' means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.

For the purposes of this section, a 'duly certified clinical social worker' is a 'certified clinical social worker' as defined in G.S. 90B-3(2) and certified by the North Carolina Certification Board for Social Work pursuant to Chapter 90B of the General Statutes.

For purposes of this section, a 'duly certified fee-based practicing pastoral counselor' shall be defined only to include fee-based practicing pastoral counselors certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.

For the purposes of this section, a 'duly licensed psychologist' shall be defined only to include a psychologist who is duly licensed in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Providers in Psychology. After January 1, 1995, a duly licensed psychologist shall be defined as a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.

For purposes of this section, a 'duly certified substance abuse professional' is a person certified by the North Carolina Substance Abuse Professionals Certification Board pursuant to Article 5C of Chapter 90 of the General Statutes.

The term 'dental service plan' as used in this Article and Article 66 of this Chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The insured or beneficiary of every 'medical service plan' and of every 'dental service plan,' as those terms are used in this Article and Article 66 of this Chapter, or of any policy of insurance issued thereunder, that includes services which are within the scope of practice of both a duly licensed physician and a duly licensed dentist

shall have the right to choose the provider of such care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed physician or a duly licensed dentist notwithstanding any provision to the contrary contained in any such plan or policy.

The term 'hospital service corporation' as used in this Article and Article 66 of this Chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this Article and Article 66 of this Chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

The term 'preferred provider' as used in this Article and Article 66 of this Chapter with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article and Article 66 of this Chapter or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article and Article 66 of this Chapter. Except to the extent prohibited either by G.S. 58-65-140 or by regulations promulgated by the Department of Insurance not inconsistent with this Article and Article 66 of this Chapter, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

(d) No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State."

Section 3. G.S. 135-40.7A(c) reads as rewritten:

"(c) Notwithstanding any other provision of this Part, provisions for benefits for necessary care and treatment of chemical dependency under this Part shall provide for benefit payments for the following providers of necessary care and treatment of chemical dependency:

(1) The following units of a general hospital licensed under Article 5 of General Statutes Chapter 131E:
   a. Chemical dependency units in facilities licensed after October 1, 1984;
   b. Medical units;
   c. Psychiatric units; and
(2) The following facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C:
   a. Chemical dependency units in psychiatric hospitals;
   b. Chemical dependency hospitals;
   c. Residential chemical dependency treatment facilities;

d. Social setting detoxification facilities or programs;
e. Medical detoxification facilities or programs; and

(3) Duly licensed physicians and duly licensed practicing psychologists, certified clinical social workers, substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes, licensed professional counselors, certified fee-based practicing pastoral counselors, certified clinical specialists in psychiatric and mental health nursing, and certified professionals working under the direct supervision of such physicians or psychologists in facilities described in (1) and (2) above and in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of General Statutes Chapter 122C.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency."

Section 4. G.S. 135-40.7B(c) reads as rewritten:

"(c) Notwithstanding any other provisions of this Part, the following providers are authorized to provide necessary care and treatment for mental illness under this section:

(1) Licensed psychiatrists;
(2) Licensed or certified doctors of psychology;
(3) Certified clinical social workers;
(3a) Licensed professional counselors;
(4) Psychiatric nurses;
(4a) Substance abuse professionals certified under Article 5C of Chapter 90 of the General Statutes;
(5) Other social workers under the direct employment and supervision of a licensed psychiatrist or licensed doctor of psychology;
(6) Psychological associates with a master's degree in psychology under the direct employment and supervision of a licensed psychiatrist or licensed or certified doctor of psychology;
(7) Licensed psychiatric hospitals and licensed general hospitals providing psychiatric treatment programs;
(8) Certified residential treatment facilities, community mental health centers, and partial hospitalization facilities; and
(9) Certified fee-based practicing pastoral counselors."

Section 5. This act becomes effective July 1, 1997, and applies to claims for payment or reimbursement for services rendered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 876

Short Title: Criminal Checks/Contract Agencies. (Public)

Sponsors: Senators Forrester; Cochrane and Lucas.

Referred to: Children & Human Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW PERTAINING TO CRIMINAL BACKGROUND CHECKS REQUIRED TO BE OBTAINED BY NURSING HOMES, ADULT CARE HOMES, AND HOME CARE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40 reads as rewritten:

"**§ 131D-40. Criminal history record checks required for certain applicants for employment.**

(a) ~~Requirement.~~ Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be ~~disclosed.~~ disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this

section. A contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~administrator of the~~ adult care home or ~~the administrator's designee~~ a contract agency of the adult care home shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~administrator or the administrator's designee.~~ adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. -- An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article

20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

Section 2. G.S. 131E-265 reads as rewritten:

"**§ 131E-265. Criminal history record checks required for certain applicants for employment.**

(a) ~~Requirement.~~ Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be ~~disclosed.~~ disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~administrator of the~~ nursing home or home care ~~agency, or the administrator's designee,~~ agency, or the contract agency of a nursing home or home care agency, shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~administrator or the administrator's designee.~~ nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. -- An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, the term 'relevant offense' has the same meaning as in G.S. 131D-40."

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

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April 28, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: Senate Bill 876: Criminal Checks/Contract Agencies

Background: In 1996, the General Assembly passed legislation requiring criminal background checks (CBC) on unlicensed applicants for employment at nursing homes, adult care homes, and home care agencies. The law requires these employers to request a CBC from the State Bureau of Investigation (SBI) within five business days of making a conditional offer of employment. The CBC request may be based on the applicant's name only or the employer may submit the applicant's fingerprints to the SBI. If the CBC shows that the applicant has a criminal history, the employer is not precluded from hiring the applicant, but must consider factors listed in the law in deciding whether to disqualify the applicant.

Senate Bill 876: This bill will:

Add Contract Agencies to CBC Law. Many of these agencies, especially nursing homes, use contract labor for some functions. For example, nursing homes often use contract labor for nursing assistants. However, current law does not require contract agency employers to obtain CBCs on their own employees. The result is that there are many people working with the elderly whose criminal history has not been checked. **This bill requires contract agencies of nursing homes, adult care homes and home care agencies to obtain CBCs on their own unlicensed applicants for employment.**

Permit Disqualification Based on CBC. An employer may request a CBC based on either the applicant's name or the applicant's fingerprints. If the employer wants to disqualify an applicant due to information in the CBC, and the CBC was based on the applicant's name, current SBI rules do not permit the employer to use the CBC to disqualify the applicant. Instead, the employer must contact the county(ies) where the criminal history occurred for a copy of the public record. The employer may disqualify the employee based on the public record, but not on

the CBC itself. Compare this to a CBC based on the applicant's fingerprints in which the employer may use the CBC itself to disqualify the applicant.

This bill allows an employer to disqualify an applicant using a CBC regardless of whether the CBC was based on the applicant's name or fingerprints. In other words, employers who based their CBC requests on the applicant's name will no longer be required to obtain a copy of the public record in order to disqualify an applicant.

This act becomes effective January 1, 1998.

S876-smrm-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 962

Short Title: Vol. Commitment/Mother on Drugs. (Public)

Sponsors: Senator Martin of Guilford.

Referred to: Children & Human Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MENTAL HEALTH COMMITMENT LAW TO PROVIDE FOR VOLUNTARY COMMITMENT OF MOTHERS WHO ARE SUBSTANCE ABUSERS AND THEIR CHILDREN UNDER AGE THREE.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 122C-211 reads as rewritten:

"(a) Except as provided in subsections (b) through ~~(e)~~ (f) of this section, any ~~individual~~ individual, including a parent in a family unit, in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client.

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release

that ~~he~~ the applicant may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that ~~he~~ the individual will receive treatment for more than 30 days or shall produce a current, valid physical examination report, signed by a physician, completed within 12 months prior to the current admission. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, ~~he~~ the individual may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

(f) Any family unit that voluntarily seeks admission to a 24-hour substance abuse facility shall be evaluated to determine whether the family unit would benefit from the services of the facility. That facility shall be able to provide directly or by contract treatment, habilitation, or rehabilitation services that will specifically address the family unit's needs. These services shall include gender-specific substance abuse treatment, habilitation, or rehabilitation for the parent as well as assessment, well-child care, and early intervention services for the child. A family unit shall not be accepted as a client if the facility determines that the family unit does not need or cannot benefit from the care, habilitation, or rehabilitation available at the facility and that the parent is not in need of further evaluation by the facility. The facility shall give to a family unit that is denied admission a referral to another facility or facilities that may be able to provide treatment needed by the family unit. Except as otherwise provided, this section applies to a parent in a family unit seeking admission under this section.

(g) As used in this Part, the term 'family unit' means a parent and the parent's dependent children under the age of three years."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1023

Short Title: Family Foster Home Standards. (Public)

Sponsors: Senators Foxx; Blust, Carpenter, Carrington, Clark, Cochrane, Forrester, Garwood, Hartsell, Horton, Kincaid, Ledbetter, and Rucho.

Referred to: Children & Human Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE STANDARDS FOR THE QUALITY OF CARE IN FOSTER HOMES AND TO ALLOW COUNTY DEPARTMENT OF SOCIAL SERVICES TO GRANT WAIVERS TO THE STANDARDS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1998, Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"**§ 131D-10.10. Family foster home rules.**

(a) The Commission shall adopt standards, by rule, to ensure at a minimum, but shall not be limited to, the provision of the following by family foster homes:

(1) Not more than seven children may be served in any family foster home at any one time. These seven children shall include the foster parent's own children, foster children, day care children, or any other children.

(2) Not more than five foster children shall reside in a family foster home at any one time.

(3) Of the maximum capacity, there shall be no more than:

a. Two children under two years of age;

b. Four children under four years of age;

c. Six children under 12 years of age, in a family foster home at any one time.

(b) Within 30 days of a prior written notice to the Department, the County Department of Social Services may grant a waiver to a family foster home to one or more of the standards described in subsection (a) only if the following conditions are met:

(1) Written verification by a licensed building inspector is presented to the County Department of Social Services that the family foster home residence meets the fire and building safety standards in Section 510 of the residential building code, as set forth in 10 NCAC 41E .0700; and

(2) Written and certified documentation is presented to the County Department of Social Services regarding the foster parents skill, stamina, and capacity to care for the children.

(c) Members of the natural family 18 years old and over are not included in capacity, but physical accommodations in the home must be adequate.

(d) If the Department is made a party of any action, suit, or proceeding arising out of the county's granting of the waiver as provided for in subsection (b), the Department shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding."

Section 2. The Commission shall adopt temporary rules to implement this section. These rules shall take effect no later than January 1, 1998.

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

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April 28, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Co-Counsel

RE: **S 1023:** AN ACT TO PROVIDE STANDARDS FOR THE QUALITY OF CARE IN FOSTER HOMES AND TO ALLOW COUNTY DEPARTMENT OF SOCIAL SERVICES TO GRANT WAIVERS TO THE STANDARDS UNDER CERTAIN CIRCUMSTANCES

Background: Under current law, a family foster home may not care for more than seven children at any one time. This "cap" includes the foster parent's own children, foster children, day care children or any other children. In counties where child care resources are scarce, this "seven child at one time" cap presents obvious placement problems for foster children and may also limit the availability of child day care placements in the county.

The current law allows for an issuance of an exception or waiver to the cap if the County DSS can show that the foster home is safe for more than seven children, and the foster parents are capable of caring for more than seven children at one time. However, the cap may not be lifted until the Division grants the exception.

The child placement problem often begs for an immediate solution, and the unavoidable delay between the submission of the petition and the issuance of the exception jeopardizes the county's ability to respond effectively to the need. Also, the Division may not be in the best position to know all circumstances contributing to the problem

What the bill does: The bill responds to the problem by changing the procedure in which the exception is granted. The bill authorizes the county DSS to grant the exception or waiver and requires the Division to be notified of the action. Also, the bill spells out the legislative intent that any liability for injuries arising out of the county's action shall not fall upon the Division.

What the amendment does: The amendment says that the county DSS must notify the Division AFTER the exception is granted rather than BEFORE it's granted. It also deletes the reference to a citation in the Building Code that is incorrect, although it is referenced in the rule.

The bill is effective when it becomes law.
S1023-smrm-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 851

Short Title: Limit Provisional License. (Public)

Sponsors: Senators Kinnaird; Forrester, Foxx, Lee, Lucas, Martin of Guilford, and Rand.

Referred to: Children & Human Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AMOUNT OF TIME AN ADULT CARE HOME MAY OPERATE UNDER A PROVISIONAL LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-2(b) reads as rewritten:

"(b) Licensure; inspections. --

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any domiciliary home whose administrator was the administrator for any domiciliary home (adult care home) that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable

information that the Department may by rule require. The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Social Services Commission, for substantial failure to comply with the provisions of this section or rules promulgated pursuant to this section. A facility shall not operate under a provisional license for more than a total of 180 days in a calendar year. If a facility has operated under a provisional license for more than 180 days in a calendar year and any physical plant changes directed by the Department do not require a longer period of time to complete, the Department shall initiate revocation proceedings. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20

days after the Department mails a notice of summary suspension to the licensee.

(4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):

a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(5) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Human Resources and of any county department of social services regarding inspections of domiciliary care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants."

Section 2. This act is effective when it becomes law and applies beginning with calendar year 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 757

Short Title: Advance Instr./Mental Health. (Public)

Sponsors: Senator Miller.

Referred to: Children & Human Resources.

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 122C of the General Statutes is amended by designating G.S. 122C-51 through G.S. 122C-70 as "Part 1".

Section 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new Part to read:

"Part 2. Advance Instruction for Mental Health Treatment.

"**§ 122C-71. Purpose.**

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control.

"**§ 122C-72. Definitions.**

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Advance Instruction' means a written instrument, signed by two qualified witnesses, that makes a declaration of preferences or provides information regarding mental health treatment and that may appoint an attorney-in-fact.

(2) 'Attending physician' means the physician who has primary responsibility for the care and treatment of the principal.

(3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-75 to make mental health treatment decisions for a principal under an advance instruction for mental health treatment and also means an alternative attorney-in-fact.

(4) 'Incapable' means that, in the opinion of a physician or eligible psychologist, the person currently lacks the capacity to make and communicate mental health treatment decisions.

(5) 'Mental health treatment' means electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

(6) 'Principal' means the person making the advance instruction.

(7) 'Qualified witness' means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:

a. The attending physician or mental health service provider or a relative of the physician or provider; or

b. An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident.

"§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.

(a) Any adult of sound mind may make an advance instruction of information or preferences regarding mental health treatment. The information or preferences may include consent to or refusal of mental health treatment. The advance instruction may also appoint an attorney-in-fact.

(b) Information and preferences expressed in an advance instruction may include, but are not limited to, the names and telephone numbers of individuals to be contacted in case of mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications

that the principal is taking or has taken in the past and the effects of those medications.

(c) A person shall not be required to execute or to refrain from executing an advance instruction as a criterion for insurance, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the advance instruction for mental health treatment shall cease to be effective upon the appointment and qualification of the guardian.

(f) An advance instruction for mental health treatment may be combined with or incorporated into a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes.

"**§ 122C-74. Effectiveness and duration; revocation.**

(a) An advance instruction becomes operative when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an operative advance instruction when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

(b) Upon being presented with an advance instruction, a physician or other provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, a physician or provider shall comply with it to the fullest extent possible, unless compliance is not consistent with:

(1) Best medical practice to benefit the principal;

(2) The availability of treatments requested; and

(3) Applicable law.

If the physician or other provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (3) of this subsection, the physician or provider shall promptly notify the principal and, if applicable, the attorney-in-fact and document the reason for not complying with that part and document the notification in the principal's medical record.

(c) An advance instruction for mental health treatment continues in effect for a period of two years, unless revoked. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the advance instruction continues in effect

as long as the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(d) Except as provided in subsection (b) of this section, the physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in an advance instruction for mental health treatment only:

(1) If the principal is committed to a 24-hour facility pursuant to Article 5 of G.S. 122C and treatment is authorized in compliance with G.S. 122C-57 and administrative rule; or

(2) In cases of emergency endangering life or health.

(e) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(f) An advance instruction may be revoked in whole or in part at any time by the principal if the principal is capable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record.

(g) A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.

(a) An advance instruction may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions shall be consistent with any desires the principal has expressed in the advance instruction.

(b) None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident, if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

(c) The attorney-in-fact shall not have authority to make mental health treatment decisions unless the principal is incapable.

(d) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(e) Except to the extent the right is limited by the advance instruction or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(f) In exercising authority under the advance instruction, the attorney-in-fact shall act consistently with the desires of the principal as expressed in the advance instruction. If the principal's desires are not expressed in the advance instruction and are not otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith believes to be the manner in which the principal would act if the principal was not incapable.

(g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise affect any nonmental health treatment powers granted by the principal to a health care agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general power of attorney; provided that the mental health treatment powers granted to the attorney-in-fact shall be superior to any similar powers granted by the principal to a health care agent pursuant to a health care power of attorney or an attorney-in-fact pursuant to a general power of attorney.

(h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(i) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.

(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

"**§ 122C-76. Penalty.**

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision.

"**§ 122C-77. Statutory form for advance instruction for mental health treatment.**

The use of the following or similar form in the creation of an advance instruction for mental health treatment is lawful, and when used, it shall be construed in accordance with the provisions of this Article.

'ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this advance directive for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment of mental illness with psychoactive medication, and admission to and retention in a facility.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

_____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

____ I consent to the administration of the following medications:

_____

_____

____ I do not consent to the administration of the following medications:

_____

_____

Conditions or limitations: _____

_____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

____ I consent to the administration of convulsive treatment.

____ I do not consent to the administration of convulsive treatment.

Conditions or limitations: _____

_____

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

____ I consent to being admitted to a health care facility for mental health treatment.

My facility preference is _____

____ I do not consent to being admitted to a health care facility for mental health treatment.

This directive cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations: _____

_____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

These preferences or instructions shall apply during the entire length of my incapacity.

In case of mental health crisis, please contact:

1. Name: _____
   Home Address: _____
   Home Telephone Number: _____ Work Telephone Number: _____
   Relationship to Me: _____
2. Name: _____
   Home Address: _____
   Home Telephone Number: _____ Work Telephone Number: _____
   Relationship to Me: _____
3. My Physician:
   Name: _____ Telephone Number: _____
4. My Therapist:
   Name: _____ Telephone Number: _____

The following may cause me to experience a mental health crisis: _____

_____

_____

The following may help me avoid a hospitalization: _____

_____

_____

I generally react to being hospitalized as follows: _____

_____

_____

Staff of the hospital or crisis unit can help me by doing the following: _____

_____

_____

I give permission for the following person or people to visit me:

_____

_____

_____

_____

Other preferences or instructions: _____

_____

_____

_____

_____

___ I have attached an additional sheet of preferences or instructions to be followed and considered part of this advance directive.

ATTORNEY-IN-FACT

I hereby appoint:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:

Name: _____

Home Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

My attorney-in-fact is authorized to make decisions that are consistent with the wishes I have expressed in this advance directive or, if not expressed, as are otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interests.

If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my attorney-in-fact to serve in that capacity.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my attorney-in-fact.

_____ _____

Signature of Principal Date

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance directive for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:

A person appointed as an attorney-in-fact by this document;

The principal's attending physician or mental health service provider or a relative of the physician or provider;

The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or

A person related to the principal by blood, marriage, or adoption.

Witnessed by:

Witness: _____ Date: _____

Witness: _____ Date: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a qualified crisis services professional and a physician or eligible psychologist. I understand that the principal may revoke this advance directive in whole or in part at any time and in any manner when the principal is not incapable.

Signature of Attorney-in-fact Date

Signature of Alternative Attorney-in-fact Date' "

Section 3. G.S. 122C-57 reads as rewritten:

"**§ 122C-57. Right to treatment and consent to treatment.**

(a) Each client who is admitted to and is receiving services from a facility has the right to receive age-appropriate treatment for mental health, mental retardation, and substance abuse illness or disability. Each client within 30 days of admission to a facility shall have an individual written treatment or habilitation plan implemented by the facility. The client and ~~his~~ the client's legally responsible person shall be informed in ~~an~~ advance of the potential risks and alleged benefits of the treatment choices.

(b) Each client has the right to be free from unnecessary or excessive medication. Medication shall not be used for punishment, discipline, or staff convenience.

(c) Medication shall be administered in accordance with accepted medical standards and only upon the order of a physician as documented in the client's record.

(d) Each voluntarily admitted ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the ~~client or his~~ client, the client's legally

responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or ~~his~~ designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give ~~him~~ the client a realistic opportunity of improving ~~his~~ the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm ~~him~~self or others before improvement of ~~his~~ the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person.~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the ~~client or his~~ client, the client's legally responsible ~~person~~ person, a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation."

Section 4. This act becomes effective January 1, 1998.

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April 28, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: **Senate Bill 757** – AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

The bill provides statutory authority and a format for a person with mental illness to create an advance instruction . The advance instruction will:

- **provide or withhold consent**, in advance, to certain types of treatment in the event he or she is rendered incapable by their mental illness to exercise treatment choices. The advance instruction is triggered when a physician or psychologist determines that the person is incapable of making the treatment decision. The advance instruction may provide or withhold consent to:
  - use of psychoactive medications
  - use of convulsive treatment
  - admission to and retention in a treatment facility

- **appoint an attorney-in-fact** (validly appointed under G.S. 122C-75) to make treatment decisions for them under the advance instruction if they are incapacitated by their mental illness.

- **provide advance instruction concerning their preferences** or instruction concerning who to contact during a crisis, what helps to stabilize them, etc.

- nominate a guardian of the person, if guardianship proceedings are commenced.

Duration: The advance instruction may be revoked at any time, and unless revoked, it expires after two years.

Duty of physician or provider to comply with the advance instruction: The physician or provider must comply to the fullest extent possible with the advance instruction when the patient

is found to be incapable of providing informed consent. The advance instruction become a part of the patient's medical record. Compliance is not required if to do so would be inconsistent with the best medical practice to benefit the patient, or the treatments requested are not available, or compliance would be in violation of law.

The bill will also allow a physician or provider to treat the patient contrary to the advance instruction if the patient has been involuntarily committed to a facility and treatment is otherwise authorized by law, or in cases of emergencies that endangers the life or health of the patient or another person.

Criminal penalty: The bill provides for a criminal penalty for anyone found guilty of altering or destroying a otherwise valid advance instruction with the intent or effect of affecting a mental health treatment decision.

Statutory form for advance instruction: The bill includes a form to use in the creation of an advance instruction and appointment of attorney in-fact. When the form is used, it will be construed to be in compliance with the law.

The act will become effective January 1, 1998.

S757-smrm-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1006

Short Title: Expedite Parental Rights Termination. (Public)

Sponsors: Senator Gulley.

Referred to: Children & Human Resources.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE JUVENILE CODE TO EXPEDITE THE PROCEDURE FOR TERMINATION OF PARENTAL RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.24 reads as rewritten:

"**§ 7A-289.24. Who may petition.**

(a) A petition to terminate the parental rights of either or both parents to his, her, or their minor child may only be filed by:

(1) Either parent seeking termination of the right of the other parent; or

(2) Any person who has been judicially appointed as the guardian of the person of the child; or

(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction; or

(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the child has been surrendered for adoption by one of the parents or by the guardian of the person of such child, pursuant to G.S. 48-9(a)(1); or

(5) Any person with whom the child has resided for a continuous period of two years or more next preceding the filing of the petition; or

(6) Any guardian ad litem appointed to represent the minor child pursuant to G.S. 7A-586, who has not been relieved of this responsibility and who has served in this capacity for at least one continuous year; or

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency having the authority to file a petition pursuant to subsection (a) of this section shall be entitled to intervene in a pending abuse, neglect, and dependency proceeding for the purpose of filing a petition to terminate parental rights."

Section 2. G.S. 7A-289.27 reads as rewritten:

"**§ 7A-289.27. Issuance of summons.**

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor. However, service of the summons under the procedures established by G.S. 1A-1, Rule 4(j) shall not be required if the respondent has been previously served pursuant to G.S. 7A-565. When a respondent has been previously served pursuant to G.S. 7A-565, the respondent shall be served as provided under the procedures established by G.S. 1A-1, Rule 5.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. Any counsel previously appointed to represent a parent shall continue the representation through this proceeding. ~~The~~ If a parent has no previously appointed counsel, the parents may contact the clerk immediately to request counsel;

~~(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;~~

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

Section 3. G.S. 7A-564 reads as rewritten:

"**§ 7A-564. Issuance of summons.**

(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, ~~undisciplined, or delinquent,~~ the clerk shall issue a summons to the ~~juvenile, to the parent,~~ parent and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(a1) Immediately after a petition has been filed alleging a juvenile is undisciplined or delinquent, the clerk shall issue a summons to the juvenile, to the parent, and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are

alleged in the petition or that contributed to the removal of the juvenile from the custody of the parent.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

(c) The summons shall advise the parent that upon service, jurisdiction over the parent is obtained and that failure of the parent to comply with any order of the court pursuant to G.S. 7A-650 may cause the court to issue a show cause order for contempt.

(c1) The summons shall advise the parent that upon service, jurisdiction over the parent is obtained for any subsequent hearing to terminate the parental rights of the parent pursuant to Chapter 7A, Article 24B of the General Statutes.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process."

Section 4. G.S. 7A-565 reads as rewritten:

"**§ 7A-565. Service of summons.**

(a) Petition Alleging That a Juvenile Is Undisciplined or Delinquent. -- The summons shall be personally served upon the parent, the guardian, custodian, or caretaker, and the juvenile or counsel or guardian ad litem, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the judge.

If the parent, guardian, or custodian entitled to receive a summons cannot be found by a diligent effort, the judge may authorize service of the summons and petition by mail or by publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the judge, in his discretion, may direct.

If the parent, guardian, or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, he may be proceeded against as for contempt of court.

The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process apply to juvenile process; provided the period of time for return of an unserved summons is 30 days.

(b) Petition Alleging That a Juvenile Is Abused, Neglected, or Dependent. The summons shall be served upon the parent, the guardian, custodian, or caretaker as provided under the procedures established by G.S. 1A-1, Rule 4(j) not less than five days prior to the date of the scheduled hearing. Notwithstanding any other provision of law, a minor parent of the child shall not be considered to be under disability. The time for service may be waived in the discretion of the judge. Efforts to serve any unserved parent shall continue after the hearing."

Section 5. G.S. 7A-577 is amended by adding a new subsection to read:

"(h1) At each hearing, the court shall also inquire as to the identity and location of any missing parent to determine the need for continued nonsecure custody. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific effort aimed at determining the identity and location of any missing parent."

Section 6. G.S. 7A-587 reads as rewritten:

"**§ 7A-587. Parent's right to counsel.**

In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. In no case may the judge appoint a county attorney, prosecutor or public defender. The court may, in its discretion, appoint counsel for a missing parent for the purpose of ensuring that a complete and adequate search has been made to determine the identity and location of that parent."

Section 7. G.S. 7A-657(c) reads as rewritten:

"(c) At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following criteria:

(1) Services which have been offered to reunite the family;

(1.1) The efforts made to determine the identity and location of any missing parent;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary."

Section 8. This act becomes effective October 1, 1997.

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April 28, 1997

Memorandum

To: **Senate Children and Human Resources Committee**
From: **Carolyn D. Johnson, Committee Counsel**
Re: **Senate Bill 1006 - Expedite Parental Rights Termination**

Senate Bill 1006 amends provisions in Chapter 7A of the General Statutes to expedite procedures for the termination of parental rights.

G.S. 7A-289.24 is amended to provide that any person or agency, with authority to file a petition to terminate parental rights, is entitled to intervene in pending abuse, neglect and dependency proceedings for the purpose of filing a petition to terminate parental rights.

G.S. 7A-289.27 is amended to provide that a summons served pursuant to Rule 5 of the Rules of Civil Procedure shall be sufficient if a respondent has been previously served with a summons and petition alleging a juvenile is undisciplined, delinquent, abused, neglected or dependent pursuant to G.S. 7A-565. The amendment provides also that a summons include notice that counsel previously appointed to indigent parents shall continue representation through expedited proceedings. A conforming amendment deletes language in conflict with the two previous amendments.

G.S. 7A-564 is amended to provide that the clerk is no longer required to serve summons on a juvenile in petitions alleging abuse, neglect or dependency. G.S. 7A-565 is amended to provide that a summons in abuse, neglect and dependency cases shall be served in accordance with Rule 4(j) of the Rules of Civil Procedure not less than five days prior to a scheduled hearing. Minor parents shall not be considered under disability, and the time for service may be waived in the discretion of the judge.

G.S. 7A-577 is amended to require the court to inquire as to the identity and location of any missing parent in determining the need for continued nonsecure custody. At every review hearing, the court shall review efforts taken to locate the missing parent and may order specific efforts to be undertaken to locate the missing parent. G.S. 7A-587 is amended to provide that the court may appoint counsel for the missing parent to ensure a complete and adequate search has been made to locate the missing parent.

The act becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 924

Short Title: Criminal Record Checks/DHR. (Public)

Sponsors: Senator Odom.

Referred to: Children & Human Resources.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL RECORD CHECKS OF EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Human Resources.**

(a) Definitions. -- As used in this section, the term:

(1) 'Criminal history' means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Human Resources. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article

19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(2) 'Covered person' means an individual who is an applicant for employment or is employed with the Department of Human Resources.

(b) When requested by the the Department of Human Resources, the Department of Justice may provide to the Department of Human Resources criminal history from the State and National Repositories of Criminal Histories of an individual who is employed or applies for employment with the Department of Human Resources. For requests for a State criminal history record check only, the Department of Human Resources shall provide to the Department of Justice a form consenting to the check signed by the employee or applicant to be checked and any additional information required by the Department of Justice. For requests that include a national criminal record check, the Department of Human Resources shall provide to the Department of Justice the fingerprints of the employee or 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 employee or applicant to be checked. The fingerprints of the employee or 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 Department of Human Resources shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Human Resources shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the Department of Human

Resources receives through the checking of the criminal history is privileged information and for the exclusive use of the Department of Human Resources.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Human Resources. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department of Human Resources in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Human Resources may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. The refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Human Resources may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

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

VISITOR REGISTRATION SHEET

Children & Human Resources — 4/30/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ramona Ramone	DSS
Chuck Harris	DHR-DSS
H. David Bruton	DHR
Jesse J. Sills	Addict. Profs of NC
Tony Mutchinill	Alcohol/Drug Council of NC
Cathy Coleman	A.P.N.C.
Angie McMillan	DHR
Linda Summers	NC Equity
Randy Brantley	Orange Co Adult Care Home Assn.
Kathie Young	SEN. KINNAIRDS CLERK
Wendy Mills	SEANC
Jon Levine	DEHNR
[illegible]	NASW-NC
Elizabeth Holman	NASW - NC Intern
Ila Stein	SAS
Marlon Scott Robbins	SAS
Whitney Hoag	DHR/DSS
Dick McGee	Assoc. of Blacks
Tommy Worth	Carolinas Health Care System
Mac Brownlee	Gov's Adv. Council for Persons w Disabilities
Lynda McDaniel	DHR/DFS
[illegible]	NCAA

AGENDA

May 14, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

H363	Child Support Options/Fee	Rep. Gardner
H28	DSS Board Change	Rep. Baker
H153	Dependent Juvenile Definition	Rep. Easterling
H165	Lodging Establishments/Sanitation	Rep. Redwine

Pages: Barbara Cobb, Raleigh
Sponsor: Senator Reeves
Chriatina Blackburn, Kernersville
Sponsor: Senator Horton

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Next Meeting Scheduled for Wednesday, May 21 1997 11:00am Room 544LOB

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Archie McMillian

Next Meeting Scheduled for Wednesday, May 21 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Monday, May 14, 1997

The Senate Committee on Children & Human Resources met at 8:15 a.m. on Wednesday May 14, 1997 in Room 423 of the State Legislative Office Building.

Twelve (12) members of the Committee were present.

Senator Winner, Co-Chairman of the Committee, called the meeting to order.

House Bill 363 entitled Child Support Options/Fee was presented by its sponsor, Representative Gardner. Representative Gardner explained the bill. After discussion of the bill it was decided that it would be put on hold until the next meeting.

House Bill 28 entitled DSS Board Change, was presented by its sponsor Representative Baker. Representative Baler explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to Senate committee substitute bill.

Winner amendment

House Bill 153 entitled Dependent Juvenile Definition, was presented by its sponsor Representative Easterling, Representative Easternling explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

House Bill 165 entitled Lodging Establishments/Sanitation, was presented by its sponsor representative Redwine. Representative Redwine explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

The business being completed, the meeting was adjourned. The next scheduled meeting will be held on Wednesday May 21, 1997 11:00 am Room 544 LOB.

Bernadette David-Yerumo

Bernadette David-Yerumo, Committee Clerk

Jeanne H. Lucas

Senator Jeanne H. Lucas, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, May 14, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **153** Dependent Juvenile Definition
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **165** Lodging Establishments/Sanitation
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Thursday, May 15, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

H.B. **28** DSS Board Change

Draft Number:	PCS6265
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

2

TOTAL REPORTED: 1

Committee Clerk Comment:

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: Gardner

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.

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May 14, 1997

Memorandum

To: Senate Children and Human Resources Committee

From: Carolyn D. Johnson, Committee Counsel

Re: House Bill 363 - Child Support Options/Fees

House Bill 363 provides that the Department of Human Resources shall not elect any child support distribution option for families on public assistance for which the federal government does not provide funding for the State to exercise the option. (Section 1)

The bill also increases the fee for child support enforcement services provided to non-public assistance families. The fee would become $25, except that it would remain at $10 for indigent persons. (Section 2)

Section 1 of the bill becomes effective 30 days after the act becomes law. Section 2 of the bill becomes effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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

H 2

HOUSE BILL 28
Second Edition Engrossed 3/4/97

Short Title: DSS Board Change. (Public)

Sponsors: Representatives Baker; and Davis.

Referred to: Human Resources.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE FIFTH MEMBER OF A COUNTY BOARD OF SOCIAL SERVICES TO BE SELECTED BY MAJORITY VOTE OF THE FOUR OTHER MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-3(b) reads as rewritten:

"(b) Five-Member Board. -- The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth ~~member.~~ by majority vote of the membership. If ~~the four~~ a majority of the four are unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection."

Section 2. This act is effective when it becomes law and applies to elections taking place on or after this date.

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May 13, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: HB 28: DSS Board Change (2nd Edition)

The county board of social services in each county consists of either 3 or 5 members. The method for the appointment of the members is set forth in G.S. 108A-3. House Bill 28 will amend this section as it pertains to the appointment of a five-member board.

Under current law, 2 members of the board are appointed by the county board of commissioners and 2 members are appointed by the Social Services Commission. These four members then select the fifth member by consensus. All four members must agree in the selection. If they are unable to agree, the senior regular superior court judge of the county will make the selection.

Under the bill, the fifth member is selected by a majority vote of the membership. The judge will make the selection if the majority of the four members are unable to agree upon the selection of the fifth member.

This act is effective when it becomes law and applies to elections taking place on or after this date.

Note the following opinion of the Attorney General regarding the interpretation of the current statute:

Subsection (b) does not require that all four members of a five member county board of social services be present when the board selects its fifth member. But it does requires that the other four members of a county board of social services be unanimous in their selection of the fifth member. 58 N.C.A.G. 48 (1988).

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 28 DATE 5-14-97

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Wunner
Sen.)

1 moves to amend the bill on page 1, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4 " the fifth ~~member.~~ member by majority
5 vote of the membership. ~~If the four~~ a
6 majority of the".
7
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19

SIGNED Leslie Wunner

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 153*

Short Title: Dependent Juv. Definition Change. (Public)

Sponsors: Representatives Easterling; Adams, Baddour, Clary, Cunningham, Dickson, H. Hunter, Insko, Jarrell, Jeffus, McCrary, Moore, Mosley, Nye, Smith, Wainwright, Warner, Watson, and Wright.

Referred to: Human Resources, if favorable, Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE CHILD FATALITY TASK FORCE TO IMPROVE THE DEFINITION OF "DEPENDENT JUVENILE".

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(13) reads as rewritten:

"(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because ~~he~~ the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or ~~custodian, due to physical or mental incapacity and the absence of an appropriate alternative child care arrangement,~~ custodian is unable to provide for the care or ~~supervision.~~ supervision and lacks an appropriate alternative child care arrangement."

Section 2. This act becomes effective October 1, 1997, and applies to adjudications of dependency made on or after that date.

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May 14, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: House Bill 153 **AN ACT RECOMMENDED BY THE CHILD FATALITY TASK FORCE TO IMPROVE THE DEFINITION OF "DEPENDENT JUVENILE**

Explanation:

House Bill 153 would change the law to define a "dependent juvenile" as a juvenile in need of placement or assistance because:

". . . the juvenile has no parent, guardian, or custodian responsible for his care or supervision **OR** whose parent, guardian or custodian is unable to provide for care or supervision **AND** lacks an appropriate alternative child care arrangement."

Under the bill, a juvenile who either has no parent or guardian or custodian responsible for his or her care or supervision or the juvenile's parent, guardian or custodian is unable (for any reason) to provide for his or her care or supervision and (in either case), there is no alternative child care arrangement available to the juvenile, he or she is "dependent" under the Juvenile Code.

Background Information:

When the Juvenile Code was codified in 1979 a "dependent juvenile" was defined as a juvenile in need of assistance or placement because:

". . . the juvenile has no parent, guardian, or custodian responsible for his care or supervision or whose parent, guardian, or custodian is unable to provide for his care or supervision."

Currently the Juvenile Code defines a "dependent juvenile" as a juvenile in need of placement or assistance because:

". . . the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or the juvenile's parent, guardian or custodian is unable to provide care or supervision **due to physical or mental incapacity and the absence of an appropriate alternative child care arrangement.**"

In construing this definition, it is unclear as to whether the "absence of an appropriate alternative child care arrangement" is a necessary factor in finding that a juvenile who has no parent, guardian, or custodian responsible for his or her care and supervision is "dependent". Further, it is also unclear as to whether the phase "due to physical or mental incapacity" applies to the parent, guardian or custodian or to the juvenile.

"Dependent Juvenile" compared to "Neglected Juvenile"
A dependent juvenile is distinguished in the Juvenile Code from a neglected juvenile in that a neglected juvenile is one ". . .who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law"

Other states:
Only three other states (Arizona, Colorado, and Kentucky) have a statutory definition of "dependent juvenile". The definitions are provided for comparison to NC below.

1. **Arizona**: "Dependent Child" mean a child who is adjudicated to be:
(a) In need of proper and effective parental care and control and has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.
(b) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care, or whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian, or any other person having custody or care of the child.
(c) Under the age of eight years and who is found to have committed an act that would result in adjudication as a delinquent or incorrigible child if committed by an older child.
(d) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in 13-604.

2. **Colorado**: "Neglected or dependent child"
(1) A child is neglected or dependent if:
(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him to mistreatment or abuse or a parent, guardian, or legal custodian has allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;
(c) The child's environment is injurious to his welfare;
(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being;
(c) The child is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;
(f) The child has run away from home or is otherwise beyond the control of his parent, guardian, or legal custodian.

3. **Kentucky**: "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 165*
Committee Substitute Favorable 4/29/97

Short Title: Lodging Establishments/Sanitation. (Public)

Sponsors:

Referred to:

February 13, 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 multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of a 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.

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May 13, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: **House Bill 165 (2nd Edition) - Sanitization of Cooking Utensils Provided by Lodging Establishments** - Rep. Redwine

---

House Bill 165 (2nd edition) exempts a lodging unit that supplies multi-use utensils in the guest's room to be used for the preparation of food in the 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 multi-use 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 multi-use 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 lodging units that provides utensils for use in the guest's room for preparing food while staying in the unit.

Section 2 makes the bill effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Children + Human Resources — 5/14/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Eddie Caldwell	NC Hotel + Motel Assn
John Rustin	NCFPC
David Fennell	Hofer, McNeman, Caldwell, McElroy + Willis PA
Thomas V. Bennett	NCCFTF
Robyn Sawyer	Lobbyist
Pam Seamans	United Way of NC / Covenant w/ NC's Children
Douglas Blum	United Way of NC
Michael DiMeglio	Doctor of the Day
Rob Scholfield	NCJCDC
Elena Nelson	Child Fatality T.F.
Shawnee Ransome	DSS
Gerald F. Robbins	Dept of Justice
Rhonda Little	DSS – CSE
Angie McMillan	DHR
Helen Lyons	Mech. Co.
Starleen Scott Robbins	DMH/DD/SAS
Jo Stern	SAS
Jeanne Ford	Senator Kennaird's office
R Rogers	EHNR
Mr. Paul Rhodes	DEH / DEHNR
Faye Hunt	DSS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Dan Atkinson	DSS

AGENDA

May 21, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

HB363 Child Support Options/Fees	**Rep. Gardner**
HB455 Glaucoma Program Repealed/AB	**Rep. Dockham**
HB456 Reg. Deeds - No Abuse Info/AB.	**Rep. Dockham**
HB896 Day Care Changes.	**Rep. Gardner**

Pages: Shannan Stroud, Kinston, N.C.
Sponsor: Senator Warren

April Pigg, Charlotte, N.C.
Sponsor: Senator Odom

Sergeant-at-Arms: Christy Traylor
Archie McMillian

Next Meeting Scheduled for Wednesday, May 28 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Monday, May 21, 1997

The Senate Committee on Children & Human Resources met at 11:00 a.m. on Wednesday May 21, 1997 in Room 423 of the State Legislative Office Building.

Twelve (12) members of the Committee were present.

Senator Lucas, Chairman of the Committee, called the meeting to order.

House Bill 455 entitled Glaucoma Program Repealed/AB was presented by its sponsor, Representative Dockham. Representative Dockham explained the bill. After discussion of the bill it was decided that it would be reported out as favorable

House Bill 456 entitled Reg. Deeds - No Abuse Info/AB, was presented by its sponsor Representative Dockham. Representative Dockham explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

House Bill 363 entitled Child Support Options/Fees, was presented by its sponsor Representative Gardner, Representative Gardner explained the bill. After discussion of the bill it was decided that it would be reported out as favorable. this bill was referred to finance.

The business being completed, the meeting was adjourned. The next scheduled meeting will be held on Wednesday May 28, 1997 11:00 am Room 544 LOB.

Bernadette David-Yerumo, Committee Clerk

Senator Jeanne H. Lucas, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, May 21, 1997

SENATOR LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**363** Chile Support Options/Fees.
Sequential Referral: Finance
Recommended Referral: None

H.B.(CS)**455** Glaucoma Program Repealed/AB.
Sequential Referral: None
Recommended Referral: None

H.B. **456** Reg. Deeds - No Abuse Info/AB.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 455
Committee Substitute Favorable 4/7/97

Short Title: Glaucoma Program Repealed/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES CONCERNING THE DETECTION, PREVENTION, CARE, AND TREATMENT OF GLAUCOMA AND DIABETES.

The General Assembly of North Carolina enacts:

Section 1. The title to Part 3 of Article 7 of Chapter 130A of the General Statutes reads as rewritten:

"Part 3. Glaucoma and Diabetes."

Section 2. G.S. 130A-221 reads as rewritten:

"**§ 130A-221. Department authorized to establish program.**

(a) The Department ~~shall~~ may establish and administer a program for the detection and prevention of glaucoma and diabetes and the care and treatment of persons with glaucoma and diabetes. The program may include:

(1) Education of patients, health care personnel and the public;

(2) Development and expansion of services to persons with glaucoma and diabetes; and

(3) Provision of supplies, equipment and medication for detection and control of glaucoma and diabetes.

(b) The Commission is authorized to adopt rules necessary to implement the program."

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

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April 28, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: Proposed Committee Substitute for H455 : Glaucoma Program Repealed as Adopted by the House Insurance Committee

The Proposed Committee Substitute (PCS) amends G.S. 130A-221 to allow, rather than require, the Department to establish a program for the prevention and detection of glaucoma and diabetes and to allow, rather than require, the Department to provide services to care for and to treat people with glaucoma and diabetes. Under the PCS, the Department shall continue to provide health promotion and disease prevention programming in this area, and may provide care and treatment services for diabetes and glaucoma.

Background: In addition to G.S. 130A-221, under a separate statutory provision, G.S. 130A-223, (see statute text below) the Department is required to establish health promotion and disease prevention programming targeting a variety of diseases and disabilities. G.S. 130A-223 authorizes, but does not require, the Department to establish programs and services for the care and treatment such diseases. By administrative rule, Glaucoma and Diabetes are diseases that may be targeted for prevention activities. (NCAC 15-16A.0502).

The text of G.S. 130A-223:

"**§ 130A-223. Department to establish program.**
(a) The Department shall establish and administer a program for the prevention of diseases, disabilities and accidents that contribute significantly to mortality and morbidity among adults. The program may also provide for the care and treatment of persons with these diseases or disabilities.
(b) The Commission is authorized to adopt rules necessary to implement the program. "

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 456

Short Title: Reg. Deeds - No Abuse Info/AB. (Public)

Sponsors: Representative Dockham.

Referred to: Human Resources, if favorable, Finance.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW REQUIRING THE REGISTER OF DEEDS TO DISTRIBUTE INFORMATION ON THE DANGERS OF DRUG AND ALCOHOL ABUSE DURING PREGNANCY WITH EACH MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-11.1 reads as rewritten:

"**§ 161-11.1. Fees for Children's Trust Fund.**

~~(a)~~ Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

~~(b) The register of deeds shall distribute with each marriage license issued a pamphlet promoting the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother. The pamphlet to be distributed shall be prepared and paid for by the Department of Environment, Health, and Natural Resources, which shall forward the requisite number of copies to the register of deeds of each county. The funds necessary to prepare and distribute this pamphlet shall not come from the Children's Trust Fund.~~"

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

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May 20, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd, Committee Staff

RE: HB 456 - Re. Deeds - No Abuse Info

HB 456 is recommended by the Department of Environment, Health, and Natural Resources. It repeals the mandate for county registers of deeds to distribute a drug abuse pamphlet with each marriage license issued. The pamphlet contains information on the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to the fetus from drug and alcohol abuse by the mother.

The distribution of this information by the registers of deeds was begun in 1990 when G.S. 161-11.1(b) became law. Copies of the pamphlets have been supplied to the registers of deeds by the Department of Environment, Health, and Natural Resources.

The companion bill, SB 479, passed this committee, the full Senate, and has been referred to the House Committee on Human Resources.

H456-SMRI-01

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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May 14, 1997

Memorandum

To: Senate Children and Human Resources Committee

From: Carolyn D. Johnson, Committee Counsel

Re: House Bill 363 - Child Support Options/Fees

House Bill 363 provides that the Department of Human Resources shall not elect any child support distribution option for families on public assistance for which the federal government does not provide funding for the State to exercise the option. (Section 1)

The bill also increases the fee for child support enforcement services provided to non-public assistance families. The fee would become $25, except that it would remain at $10 for indigent persons. (Section 2)

Section 1 of the bill becomes effective 30 days after the act becomes law. Section 2 of the bill becomes effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

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

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.

VISITOR REGISTRATION SHEET

Children/Human Resources — May 22, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	NCHA
Patricia Yancey	APPCNC/SCSL
Susan Schmidt	NCJCDC
Mike Adams	DHR/DSS/IV-D
Ronald K. Robbins	Dept of Justice
Rhonda Lipsitz	DHR/DSS/CSE
Ben Watts	DHR/DSS
Jane Smith	DHR/DSs
NELS ROSELAND	OSBM
Patricee Rankin	NCACC
Angie McMillan	DHR
Jeff Lipe	Bayer
Karen Gillespie	Bristol-Myers Squibb
Helen Lipman	Meck. Co.
WANDA Cox-Bailey	Easter Seals / self
MICHELLE SMITH	EASTER Seals / self
Mary Green	Self - Easter Seals
Tonya Carr	Self - Easter Seals
Marian Hartman	DD Council
Billy Bryan	RBC
Grace A Sisco	DDP 161 Castlebrook Dr Mooresville
Beth T Styles	DDP 1316 B Steinbeck Dr Raleigh
KRISTI MOSER	PARENT - SPECIAL NEED CHILD FORMER TEACHER NC PEC — EASTER SEALS / PARTNERS IN POLICYMAK
Elizabeth Sellers	NASW-NC Inter
Jeanne Ford	Senator Kennaird's office

AGENDA

May 28, 1997
Children and Human Resources

Chair : Senator Jeanne H. Lucas

Vice-Chairs: Senator Dannelly
Senator Martin (Guilford)
Senator Winner
Senator Kinnaird

Ranking Minority - Senator Forrester

Bills to be Presented

HB948	Pharmacy Rehabilitation Program	Rep. Gardner
HB897	Nursing/Rest Home Adv. Comm. Apts.	Rep. McComas
HB1051	Organ Donation/Procurement	Rep. Miller

Pages: Rebecca Conner, Buxton, NC
Sponsor: Senator Basnight

Kristen Wingenroth, Charlotte, NC
Sponsor: Senator Basnight

Charles Jones, Jr., Durham, N. C.
Senator Dannelly

Sergeant-at-Arms: Archie McMillan
Carrie Barbie
Elizabeth Preston

Next Meeting Scheduled for Wednesday, June 4, 1997 11:00am Room 544LOB

Senate Committee on Children & Human Resources
Minutes of Monday, May 28, 1997

The Senate Committee on Children & Human Resources met at 8:15 a.m. on Wednesday May 28, 1997 in Room 544 of the State Legislative Office Building.

Fourteen (14) members of the Committee were present.

Senator Lucas, Chairman of the Committee, called the meeting to order.

House Bill 897 entitled Nursing/Rest Home Adv. Comm. Appts. was presented by its sponsor, Representative McComas. Representative McComas explained the bill. After discussion of the bill it was decided that it would be reported out as favorable

House Bill 948 entitled Pharmacy Rehabilitation Program, was presented by its sponsor Representative Gardner. Representative Gardner explained the bill. After discussion of the bill it was decided that it would be reported out as favorable.

House Bill 1051 entitled Organ Donation/Procurement, was presented by its sponsor Representative Miller, Representative Miller explained the bill. After discussion of the bill it was decided that it would be reported out as unfavorable as to bill, but favorable as to senate committee substitute bill.

The business being completed, the meeting was adjourned. The next scheduled meeting will be announced.

Bernadette David-Yerumo, Committee Clerk

Jeanne H. Lucas

Senator Jeanne H. Lucas, Chairman

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT
Senator Jeanne H. Lucas, Chairman

Thursday, May 29, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

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

H.B. **1051** Organ Donation/Procurement.

Draft Number:	PCS7322
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

CHILDREN & HUMAN RESOURCES COMMITTEE REPORT

Senator Jeanne H. Lucas, Chairman

Wednesday, May 28, 1997

SENATOR JEANNE H. LUCAS,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **897** Nursing/Rest Home Adv. Comm. Appts.
Sequential Referral: None
Recommended Referral: None

H.B. **948** Pharmacy Rehabilitation Program.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 897
Committee Substitute Favorable 5/1/97

Short Title: Nursing/Rest Home Adv. Comm. Appts. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REQUIREMENTS PERTAINING TO THE NUMBER OF MEMBERS OF ADVISORY COMMITTEES OF NURSING HOMES AND REST HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-128(b)(1) reads as rewritten:

"(b) (1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of ~~three.~~ three, and may have up to five additional members per committee at the discretion of the county commissioners."

Section 2. G.S. 131D-31(b) reads as rewritten:

"(b) Establishment and Appointment of Committees. --

(1) A community advisory committee shall be established in each county that has at least one licensed adult care ~~home~~ home, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county that

has one, two, or three adult care homes with 10 or more beds, the committee shall have five members.

(2) In a county with four or more adult care homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three, ~~up to~~ and may have up to five additional members at the discretion of the county commissioners, not to exceed a maximum of ~~20~~ 25 members. In each county with four or more adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each adult care home in the county. Each member must serve on at least one subcommittee.

(3) In counties with no adult care homes with 10 or more beds, the committee shall have five members. Regardless of how many members a particular community advisory committee is required to have, at least one member of each committee shall be a person involved in the area of mental retardation.

(4) The boards of county commissioners are encouraged to appoint the Adult Care Home Community Advisory Committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) shall be chosen from among persons nominated by a majority of the chief administrators of adult care homes in the county. If the adult care home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, these appointments may be made without nominations. If the county commissioners fail to appoint members to a committee by July 1, 1983, the appointments shall be made by the Assistant Secretary for Aging, Department of Human Resources, no sooner than 45 days after nominations have been requested from the adult care home administrators, but no later than October 1, 1983. In making appointments, the Assistant Secretary for Aging shall follow the same appointment process as that specified for the County Commissioners."

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

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May 22, 1997

MEMORANDUM

TO: Senate Children and Human Resources Committee

FROM: John Young, Committee Staff

RE: **House Bill 897-Nursing Home/Rest Home Advisory Committee**
Representative McComas

HISTORY

Over the period from 1977 to 1983 the General Assembly enacted the Nursing Home and the Adult Care Home Patients' Bill or Rights. This legislation also provided for community advisory committees at the county level. The legislative intent under this law was that the community advisory committees would maintain the spirit of the Patients' Bill of Rights and promote community involvement with these facilities in order that these facilities would be integrated into the total system of care for older adults.

The law contains elaborate statutory provisions for establishing, appointing, and organizing community advisory committees at the county level. Each county with a nursing home must have a community advisory committee to serve all homes in the county. If a county has three or fewer nursing homes, the advisory committee is to have five members; if it has four or more nursing homes, the committee is to have one additional member for each nursing home over three. The committee members are appointed by the board of county commissioners. A third of the members must be chosen from persons nominated by a majority of the chief administrators of the nursing homes in the county.

The statute also requires that a community advisory committee be established in each county that has at least one licensed adult care home. In a county that has one, two or three adult care homes with 10 or more beds, the committee shall have

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

five members. In a county with four or more homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three up to a maximum of 20 members. Boards of county commissioners are encouraged to appoint the members, but for any county in which the board does not appoint the members, the Assistant Secretary on Aging in DHR shall make the appointments. At least one third of the membership must be chosen from nominations made by a majority of the chief administrators of the adult care homes in the county.

House Bill 897

House Bill 897 makes the following changes in the number of members of Advisory committees of nursing homes and adult care homes:

1. For nursing homes- In a county with four or more nursing homes, the advisory committee may have up to five additional members, at the discretion of the county commissioners. (Now, the advisory committee shall have one additional member for each nursing home in excess of three)

2. For adult care homes-the county advisory committee for adult care homes will have one additional member for each adult care home in excess of three and may have up to five additional members at the discretion of the county commissioners, up to a maximum of 25 members. (Now 20)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 948

Short Title: Pharmacy Rehabilitation Program. (Public)

Sponsors: Representative Gardner.

Referred to: Human Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF PHARMACY TO ESTABLISH A RECOVERY AND REHABILITATION PROGRAM FOR PHARMACISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.6 reads as rewritten:

"**§ 90-85.6. Board of Pharmacy; creation; membership; qualification of members.**

(a) Creation. -- The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. -- The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. -- The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members."

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

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May 21, 1997

MEMORANDUM

TO: Senate Committee on Children and Human Resources

FROM: Sue Floyd, Staff

RE: HB 948 - Pharmacy Rehabilitation Program - Rep. Garnder

HB 948 amends Article 4A, Pharmacy Practice Act, of Chapter 90 of the General Statutes.

It provides that the Board of Pharmacy may establish a rehabilitation program for pharmacists. The program would be for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol.

The bill would allow the Board to use money collected as fees to fund the program.

The bill becomes effective when it becomes law.

H948-AMRI-01

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 948

Short Title: Pharmacy Rehabilitation Program. (Public)

Sponsors: Representative Gardner.

Referred to: Human Resources.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF PHARMACY TO ESTABLISH A RECOVERY AND REHABILITATION PROGRAM FOR PHARMACISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.6 reads as rewritten:

"**§ 90-85.6. Board of Pharmacy; creation; membership; qualification of members.**

(a) Creation. -- The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. -- The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. -- The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1051

Short Title: Organ Donation/Procurement. (Public)

Sponsors: Representatives Miller; Preston and Wainwright.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-412.1 reads as rewritten:

"**§ 130A-412.1. Duty of hospitals to establish organ procurement protocols.**

~~(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:~~

~~(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;~~

~~(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;~~

~~(3) Require that only the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors; and~~

~~(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.~~

~~(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.~~

~~(e) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.~~

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

(1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and

(2) Ensure that notification required under subdivision (1) of this subsection is made as soon as it is determined that brain death is imminent or cardiac arrest has occurred.

(b) Hospitals shall provide organ procurement organizations and applicable tissue banks access to patient's medical records for the purpose of determining organ potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with access to the medical records of deceased patients for the following purposes:

(1) Determining the hospital's organ and tissue donation potential;

(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and

(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization that addresses the requirements of this section.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section."

Section 2. Chapter 130A is amended by adding the following new section to read:

"**§ 130A-412.2. Duty of designated organ procurement organizations and tissue banks.**

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the designated organ procurement organization, the organ procurement organization or applicable tissue bank shall evaluate donation potential.

(b) The designated organ procurement organization or applicable tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(c) The designated organ procurement organization or applicable tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(d) The designated organ procurement organization or applicable tissue bank shall request consent for organ or tissue donation in the order of priority established under G.S. 130A-404(b) and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(e) All hospital and patient information, interview, reports, statements, memoranda, and other data obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1(d) shall be privileged and confidential and may be used by the tissue bank or organ procurement organization only for the purposes set forth in G.S. 130A-412.1(d) and shall not be admissible as evidence or discoverable in an action of any kind before a court or administrative agency."

Section 3. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1051

H1051-CSRM-002.1
Proposed Senate Committee Substitute
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Organ Donation/Procurement. (Public)

Sponsors:

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE DUTY OF HOSPITALS AND OTHER AGENCIES WITH RESPECT TO ORGAN PROCUREMENT AND DONATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-403 reads as rewritten:

"**§ 130A-403. Definitions.**

The following definitions shall apply throughout this Part:

(1) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage or distribution of a human body or its parts.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of the individual's body.

(4) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and a hospital operated by the United States government, a state or its subdivision, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Physician" or "surgeon" means a physician or surgeon licensed to practice medicine under the laws of any state.

(7) "State" includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

(7a) "Tissue bank" means any facility or program operating in North Carolina that is certified by the American Association of Tissue Banks or the Eye Bank Association of America and is involved in procuring, furnishing, donating, or distributing corneas, bones, or other human tissue for the purpose of injecting, transfusing, or transplanting any of them into the human body. "Tissue bank" does not include a licensed blood bank.

(8) "Qualified individual" means any of the following individuals who has completed a course in eye enucleation and has been certified as competent to enucleate eyes by an accredited school of medicine in this State:

a. An embalmer licensed to practice in this State;

b. A physician's assistant approved by the North Carolina Medical Board pursuant to G.S. 90-18(13);

c. A registered or a licensed practical nurse licensed by the Board of Nursing pursuant to Article 9A of Chapter 90 of the General Statutes;

d. A student who is enrolled in an accredited school of medicine operating within this State and who has completed two or more years of a course of study leading to the awarding of a degree of doctor of medicine;

e. A technician who has successfully completed a written examination by the North Carolina Eye and Human Tissue Bank, Inc., certified by the Eye Bank Association of America."

Section 2. G.S. 130A-412.1 reads as rewritten:

"§ 130A-412.1. Duty of hospitals to establish organ procurement protocols.

~~(a) In order to facilitate the goals of this Part, each hospital shall be required to establish written protocols for the identification of potential organ and tissue donors that:~~

~~(1) Assure that the families of potential organ and tissue donors are made aware of the option of organ or tissue donation and their option to decline;~~

~~(2) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of such families;~~

~~(3) Require that only the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors; and~~

~~(4) Assure that procedures are established for identifying and consulting with holders of properly executed donor cards.~~

~~(b) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation or any costs of retrieval of the organ or tissue.~~

~~(c) The requirements of this section, or of any hospital organ procurement protocols established pursuant to this section shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.~~

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

(1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and

(2) Ensure that notification required under subdivision (1) of this subsection is made as soon as it is determined that brain death is imminent or cardiac arrest has occurred.

(b) Hospitals shall provide its federally designated organ procurement organizations and tissue banks reasonable access to

patient's medical records for the purpose of determining organ potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with reasonable access during regular business hours to the medical records of deceased patients for the following purposes:

(1) Determining the hospital's organ and tissue donation potential;

(2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and

(3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

(e) Each hospital shall have a signed agreement with its federally designated organ procurement organization and tissue or bank that addresses the requirements of this section and the requirements of G.S. 130A-412.2.

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term 'organ and tissue donors' shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section."

Section 3. Chapter 130A is amended by adding the following new section to read:

"**§ 130A-412.2. Duty of designated organ procurement organizations and tissue banks.**

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the federally designated organ procurement organization or tissue bank, the federally designated organ procurement organization or tissue bank shall evaluate donation potential.

(b) The federally designated organ procurement organization or tissue bank shall assure that families of potential organ and

tissue donors are made aware of the option of organ and tissue donation and their option to decline.

(c) The federally designated organ procurement organization or tissue bank shall request consent for organ or tissue donation in the order of priority established under G.S. 130A-404(b) and shall have designated, trained staff available to perform the consent process 24 hours a day, 365 days a year.

(d) The federally designated organ procurement organization or tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

(e) All hospital and patient information, interviews, reports, statements, memoranda, and other data obtained or created by a tissue or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1 shall be privileged and confidential and may be used by the tissue bank or federally designated organ procurement organization only for the purposes set forth in G.S. 130A-412.1(d) and shall not be subject to discovery or introduction as evidence in any civil action, suit or proceeding. However, hospital and patient information, interviews, reports, statements, memoranda, and other data otherwise available are not immune from discovery or use in a civil action, suit or proceeding merely because they were obtained or created by a tissue bank or federally designated organ procurement organization from the medical records review described in G.S. 130A-412.1.

(f) If the hospital is made a party of any action, suit or proceeding arising out of the failure of a federally designated organ procurement organization or tissue bank to comply with the requirements of this section, the hospital shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit or proceeding."

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

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May 28, 1997

MEMORANDUM

TO: Members of the Senate Children and Human Resources Committee

FROM: Linda Attarian, Committee Counsel

RE: Proposed Committee Substitute for HB 1051

The Committee Substitute changes current law to require all hospitals in North Carolina to have an agreement with their federally designated organ procurement organization (OPO) for notification when potential organ donors become available. The bill will also require hospitals to provide its federally designated OPO and the tissue bank with which it has an agreement with, reasonable access to medical records for the purpose of determining organ potential, as well as post-mortem review of the hospital's organ donation potential and effectiveness of its efforts.

The law also grants immunity to the hospital and its personnel for actions taken in good faith, and for any damages arising out of the OPO's failure to comply with the requirement of the law.

The Committee Substitute made technical changes to the original bill and added the "hold harmless" provision applicable to hospitals in the event of civil actions taken against an OPO or tissue bank for its negligence. It also added a definition of "tissue bank" to clarify the bill's intent to include "eye banks".

The bill becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-28-97

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

COMMITTEE SUBSTITUTE #1051-CSRM-002.1

Rep.)
Sen.) Allran

1 moves to amend the bill on page 3, line 41

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line

4

5 " arrest has occurred, and death

6 is imminent."

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19

SIGNED Sen. Austin Allran

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1051 DATE 5-28-97

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

COMMITTEE SUBSTITUTE #

Rep.)
) Winner
Sen.)

1 moves to amend the ~~bill~~ PCS on page 4, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by adding after the period

4

5 This paragraph shall not provide immunity from

6 a civil ~~action~~ ~~Cause of~~ liability arising from gross negligence.

7

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11

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15

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19

SIGNED Leslie Winner

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-28-97

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

COMMITTEE SUBSTITUTE H1051-CSRM-002.1

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 4

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"tissue bank shall, working collaboratively with the hospital, request consent for organ or tissue donation in".

SIGNED C. L. Daniels

ADOPTED _____ FAILED _____ TABLED _____

29153 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 5-28-97

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

COMMITTEE SUBSTITUTE H1051-CSRM-002.1

Rep.)
) _____
Sen.)

moves to amend the bill on page 35, line 4

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

" tissue bank shall, working collaboratively with the hospital, request consent for organ or tissue donation in ".

SIGNED _____

ADOPTED FAILED TABLED

VISITOR REGISTRATION SHEET

Children and Human Resources 5/28/97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Lloyd Jordan	Carolina Organ Procurement Agency
Tommy Prunty	Carolina Organ Procurement Agency
Shiela Fletcher	TOWN OF BEECH MT
Jerry L. Campbell	Mayor Smithfield
Helen Lyons	Mack. Co.
BOB KAPEL	TOWN OF HOLLY SPRINGS
Susan Kapel	GAL Program
Nancy Jo Barnes	Smith Anderson
Michael Alp	N.C. D.O.A
Ben Hill	Town of Fairmont
Rusty Perry	" " "