1998

SENATE FINANCE COMMITTEE

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

SENATE FINANCE COMMITTEE

1998

JOHN H. KERR, III
CHAIRMAN

Evelyn S. Hartsell
Committee Clerk

DAVID W. HOYLE
CHAIRMAN

Penny N. Williams
Committee Clerk

SENATE FINANCE COMMITTEE MEMBERS

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

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

Austin M. Allran, Ranking Minority Member

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 13	CANSLER	SIMPLIFY AND REDUCE INHERITANCE TAX	*HF-POSTPONED INDEFINITELY	03-11-97	08-20-97
H 14	CANSLER	TAX ON CUSTOM COMPUTER SOFTWARE	*R -CH. SL 97-0370	07-07-97	07-10-97
H 15	CANSLER	CONFORM TAX ON RESTORED INCOME	*R -CH. SL 97-0213	02-26-97	03-12-97
H 19=	MCMAHAN	EXPAND CORP. CHARITABLE DEDUCTION	S -REF TO COM ON FINANCE	03-03-97	
H 20=	MCMAHAN	INCREASE CHARITY TAX CREDIT	*R -CH. SL 98-0183	03-05-97	09-24-98
H 34=	BRAWLEY	CATAWBA ANNEXATIONS	*R -CH. SL 97-0002	02-24-97	02-26-97
H 35	CAPPS	CONFORM SALES/FUEL TAX REFUND PERIOD	*R -CH. SL 97-0423	02-27-97	07-10-97
H 36	CAPPS	CONSUMER USE TAX RETURNS	R -CH. SL 97-0077	03-04-97	05-13-97
H 39	ALLRED	SWEPSONVILLE INCORPORATION	*R -CH. SL 97-0448	08-27-97	08-27-97
H 53	WARNER	82ND AIRBORNE DIVISION PLATES	*R -CH. SL 97-0156	04-23-97	05-19-97
H 54	WARNER	PEARL HARBOR/VALOR PLATE FEES	*S -REF TO COM ON FINANCE	07-31-97	
H 55	WARNER	PURPLE HEART, SILVER/BRONZE STAR	*R -CH. SL 98-0163	06-04-97	08-20-98
H 57	NEELY	TAX WITHHOLDING FOR NONRESIDENTS	*R -CH. SL 97-0109	03-25-97	04-17-97
H 59	NEELY	UPDATE IRC REFERENCE	R -CH. SL 97-0055	03-05-97	04-16-97
H 62=	IVES	HENDERSON CO. ANNEXATION AGREEMENTS	*S -RE-REF COM ON FINANCE	03-18-97	03-24-97
H 62=	IVES	HENDERSON CO. ANNEXATION AGREEMENTS	*S -RE-REF COM ON FINANCE	03-26-97	
H 63	NICHOLS	RIVER BEND ZONING/ANNEXATION	*R -CH. SL 97-0363	06-25-97	07-01-97
H 65	BEALL	CANTON DEANNEXATION	R -CH. SL 97-0100	05-07-97	05-21-97
H 68	CRAWFORD	LAKE WACCAMAW ANNEXATION	*H -REF TO COM ON LOC&RGI	09-03-98	09-03-98
H 71	CRAWFORD	HALIFAX-ROANOKE RAPIDS AIRPORT	R -CH. SL 97-0275	05-21-97	07-01-97
H 72	DECKER	OAK RIDGE INCORPORATED	*R -CH. SL 98-0113	08-14-97	08-27-97
H 74=	**CANSLER**	**PSO MEDICARE LICENSING**	***R -CH. SL 98-0227**	**07-02-98**	**10-15-98**
H 96	DICKSON	INTANGIBLES TAX REMEDY	*R -CH. SL 97-0318	07-09-97	07-17-97
H 97	DICKSON	GASTONIA RETIREMENT FUND	*R -CH. SL 97-0161	03-18-97	06-04-97
H 99=	HUNTER H	CAMDEN/BURKE SCHOOL AQUISITION	*R -CH. SL 97-0409	07-28-97	08-07-97
H 101	BAKER	EXTEND TRI-COUNTY ADMIN.	*R -CH. SL 97-0280	03-13-97	07-02-97
H 105	BEALL	JACKSON COUNTY AIRPORT AUTHORITY	*R -CH. SL 97-0022	03-13-97	04-08-97
H 115=	CULPEPPER	1997 TECHNICAL CORRECTIONS	*R -CH. SL 97-0456	08-19-97	08-20-97
H 136	WEATHERLY	LATE VIDEO RETURN/SALES TAX	*S -RE-REF COM ON FINANCE	03-19-97	06-19-97
H 136	WEATHERLY	LATE VIDEO RETURN/SALES TAX	*S -RE-REF COM ON FINANCE	06-24-97	

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 149	SHUBERT	ACCOUNT FOR 911 SURCHARGE	R -CH. SL 97-0008	03-04-97	03-18-97
H 204	NEELY	FORECLOSURE FILING FEES	R -CH. SL 97-0114	03-27-97	05-13-97
H 225=	WEATHERLY	DRY-CLEANING SOLVENT CLEAN-UP ACT	*R -CH. SL 97-0392	07-10-97	07-28-97
H 236	DOCKHAM	TRINITY INCORPORATED	*R -CH. SL 97-0044	05-06-97	05-07-97
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	03-17-97	03-25-97
H 251=	CULP	WELL CONTRACTORS CERTIFICATION	*R -CH. SL 97-0358	06-26-97	07-17-97
H 260=	GRAY	CONSERVATION EASEMENTS/TAX CREDIT	*R -CH. SL 97-0226	04-17-97	04-22-97
H 260=	GRAY	CONSERVATION EASEMENTS/TAX CREDIT	*R -CH. SL 97-0226	04-23-97	06-04-97
H 271=	SHUBERT	SCHOOL DISTRICT SALES TAX REFUNDS	*S -REF TO COM ON FINANCE	03-18-97	
H 272=	SHUBERT	PUBLIC COLLEGE SALES TAX REFUNDS	*S -REF TO COM ON FINANCE	03-18-97	
H 283	CULPEPPER	PERQUIMANS SCHOOL ACQUISITION	R -CH. SL 97-0162	04-16-97	06-03-97
H 295=	CANSLER	NO TAX ON INTANGIBLE PROPERTY	*R -CH. SL 97-0023	03-19-97	04-02-97
H 299	SEXTON	VIETNAM VETERANS PLATES	*R -CH. SL 97-0339	05-28-97	07-02-97
H 305	MORGAN	PEANUT/STRAWBERRY ASSESSMENT	*R -CH. SL 97-0371	05-15-97	07-09-97
H 311	CANSLER	ESCHEAT SUNSET REMOVED	*R -CH. SL 97-0279	04-02-97	06-26-97
H 313	ALLRED	PROHIBIT INTANGIBLES TAX ASSESSMENT	*S -REF TO COM ON FINANCE	03-27-97	
H 337	CULP	RANDOLPH OCCUPANCY TAX	*R -CH. SL 97-0342	04-07-97	06-18-97
H 337	CULP	RANDOLPH OCCUPANCY TAX	*R -CH. SL 97-0342	06-23-97	07-17-97
H 340	MOORE	KANNAPOLIS PROPERTY ACQUISITIONS	*R -CH. SL 97-0295	05-14-97	07-09-97
H 342	ALEXANDER	MECKLENBURG BID LIMIT INCREASED	*R -CH. SL 97-0184	05-07-97	06-11-97
H 348	EDDINS	CIDER/VINEGAR MANUFACTURER PERMIT	*R -CH. SL 97-0134	04-10-97	05-21-97
H 363	GARDNER	CHILD SUPPORT OPTIONS/FEES	*R -CH. SL 97-0223	05-21-97	06-18-97
H 367	HUNTER H	NORTHEAST COUNTIES INSPECTION LIEN	*S -RE-REF COM ON FINANCE	05-07-97	
H 400	TALLENT	BANK ASSESSMENTS	*R -CH. SL 97-0285	05-13-97	06-19-97
H 408	IVES	PLUMBING/HEATING CONTRACTORS	*R -CH. SL 97-0382	06-26-97	07-17-97
H 411	OWENS	CURRITUCK GAME COMM. CHANGES	R -CH. SL 97-0163	04-16-97	06-03-97
H 418	THOMPSON	MISCELLANEOUS LOCAL ACTS	*R -CH. SL 97-0410	07-24-97	07-31-97
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	06-24-97	06-24-97
H 457	WEATHERLY	AMEND FOREST DEVELOPMENT ACT	*R -CH. SL 97-0352	06-16-97	07-10-97
H 460	CULPEPPER	ABOLISH AQUARIUMS COMMISSION	*R -CH. SL 97-0286	05-19-97	06-19-97

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 463	OWENS	FARM PRODUCTS WEIGHT EXEMPTION	*R -CH. SL 97-0354	04-23-97	07-17-97
H 469=	TALLENT	PERMIT FEES	*R -CH. SL 97-0479	08-06-97	08-20-97
H 474	SUTTON	INDUSTRIAL REVENUE BONDS	*R -CH. SL 97-0111	04-10-97	05-21-97
H 476=	HURLEY	VITAL RECORDS ACCESS	*R -CH. SL 97-0242	05-06-97	06-11-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	06-03-97	07-28-97
H 488=	BARBEE	INCREASE RABIES TAG FEE	R -CH. SL 97-0069	03-26-97	04-16-97
H 495	OWENS	NATURAL GAS	*R -CH. SL 97-0426	06-02-97	07-28-97
H 506	HUNTER H	HERTFORD LOCAL ACT	*S -RE-REF COM ON FINANCE	06-05-97	
H 524=	MORRIS	UNC ALCOHOL STUDIES FUND	*R -CH. SL 97-0377	07-07-97	07-17-97
H 529	CLARY	NO TAX ROLLBACK ON CONDEMNATION	*R -CH. SL 97-0270	05-12-97	05-22-97
H 537	GRADY	RELIEF FOR FEDERAL RETIREES	*R -CH. SL 97-0499	05-26-97	08-26-97
H 549	IVES	ASHEVILLE/BILTMORE BOUNDARY	R -CH. SL 97-0250	06-11-97	06-26-97
H 554	DAVIS D	LICENSES FOR DISABLED VETERANS	*S -RE-REF COM ON FINANCE	05-28-97	
H 566	ELLIS	WAKE SCHOOLS DEVELOPMENT CHARGES	*R -CH. SL 97-0450	07-22-97	07-28-97
H 566	ELLIS	WAKE SCHOOLS DEVELOPMENT CHARGES	*R -CH. SL 97-0450	08-04-97	08-14-97
H 568	ELLIS	WAKE FOREST/BEAUFORT ANNEXATION	*R -CH. SL 97-0432	07-23-97	07-28-97
H 577	WEATHERLY	FORESTER REGISTRATION	*R -CH. SL 98-0157	08-18-98	09-01-98
H 590	CREECH	WILSON'S MILLS CHARTER	R -CH. SL 97-0413	08-18-97	08-19-97
H 600	HOLMES	FOXFIRE ASSESSMENT CLARIFICATION	*R -CH. SL 97-0451	07-22-97	08-26-97
H 603=	RAMSEY	MADISON OCCUPANCY TAX	*R -CH. SL 97-0102	04-16-97	05-12-97
H 604	SMITH	NEWPORT-MOREHEAD BOUNDARIES	*R -CH. SL 97-0185	06-03-97	06-10-97
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	07-23-97	07-29-97
H 631	DECKER	FORSYTH LOCAL ACT	*R -CH. SL 97-0408	07-21-97	08-04-97
H 643	RAYFIELD	BELMONT ANNEXATION AGREEMENT	R -CH. SL 97-0105	05-14-97	05-22-97
H 653	SEXTON	WENTWORTH CHARTER AMENDMENTS	*R -CH. SL 97-0322	07-03-97	07-17-97
H 655	SEXTON	MADISON ANNEXATION	*R -CH. SL 97-0251	06-25-97	06-26-97
H 681=	WILKINS	ROXBORO CHARTER	*R -CH. SL 97-0282	05-21-97	07-01-97
H 698	SMITH	MOREHEAD-NEWPORT/MOORESVILLE ANNEX.	*R -CH. SL 97-0219	06-03-97	06-10-97
H 704	THOMPSON	SHERIFF'S REGISTRATION PLATES	*R -CH. SL 97-0158	05-13-97	05-19-97
H 722	HARDY	WASHINGTON ANNEXATION AGREEMENTS	*R -CH. SL 97-0323	06-25-97	07-17-97

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 748	GULLEY J	MATTHEWS/CHARLOTTE BOUNDARY	R -CH. SL 97-0220	06-04-97	06-18-97
H 750	BEALL	CHARTER OF FOREST HILLS	*R -CH. SL 97-0345	07-09-97	07-17-97
H 754	DICKSON	ILLICIT LIQUOR TAX	R -CH. SL 97-0292	04-28-97	06-26-97
H 769	SHERRILL	DROPOUT PREVENTION/ DRIVERS LICENSE	*R -CH. SL 97-0507	06-26-97	08-11-97
H 773	REDWINE	BALD HEAD ISLAND CHARTER	*R -CH. SL 97-0324	05-14-97	06-18-97
H 789	BARBEE	TOWN OF OAKBORO	*R -CH. SL 97-0254	06-11-97	06-26-97
H 794=	IVES	ENGINEERING & LAND SURVEYING CHANGES	*R -CH. SL 98-0118	06-02-98	07-21-98
H 804	KISER	LINCOLN LOCAL ROADS	*R -CH. SL 97-0169	05-19-97	06-04-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX	*R -CH. SL 97-0255	05-06-97	05-21-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX	*R -CH. SL 97-0255	06-18-97	06-19-97
H 832	THOMPSON	COLLECT DELINQUENT PROPERTY TAX	*HF-POSTPONED INDEFINITELY	06-11-97	06-26-97
H 832	THOMPSON	COLLECT DELINQUENT PROPERTY TAX	*HF-POSTPONED INDEFINITELY	06-26-97	07-01-97
H 843	STARNES	CEDAR ROCK INCORPORATED	*R -CH. SL 97-0317	06-24-97	07-10-97
H 844	COLE	REIDSVILLE ANNEXATION RESTRICTED	*R -CH. SL 97-0360	06-26-97	07-29-97
H 847	CULP	WATER AUTHORITY POWERS	*R -CH. SL 97-0436	05-20-97	07-22-97
H 859	REDWINE	ROOM TAX CHANGES	*R -CH. SL 97-0364	07-21-97	07-24-97
H 860=	REDWINE	CALABASH/CAROLINA SHORES	*R -CH. SL 98-0075	07-28-98	07-28-98
H 866=	PRESTON	CARTERET/MOORE SCHOOL BD ELECTIONS	*R -CH. SL 97-0389	07-30-97	07-31-97
H 867	GULLEY J	MATTHEWS ANNEXATION/ZONING	*R -CH. SL 97-0283	06-04-97	06-26-97
H 933	JARRELL	INCREASE PHARMACY FEES	*R -CH. SL 97-0231	05-12-97	06-04-97
H 989=	ROGERS	SCHOOL ADMINISTRATOR'S EXAM FEE	*R -CH. SL 98-0016	05-14-97	06-11-97
H 989=	ROGERS	SCHOOL ADMINISTRATOR'S EXAM FEE	*R -CH. SL 98-0016	06-12-97	06-19-97
H 990	CHURCH	EXEMPT CERTAIN NONPROFIT UTILITIES	*R -CH. SL 97-0437	05-06-97	07-28-97
H 993	GRAY	REGIONAL TRANSPORTATION AUTHORITIES	*R -CH. SL 97-0393	06-18-97	07-09-97
H1027	OWENS	STATE TREASURER VENTURE CAPITAL	*S -REF TO COM ON FINANCE	07-01-97	
H1044	ROGERS	COUNTY TAX INFORMATION RECIPIENT	*R -CH. SL 97-0340	05-06-97	07-09-97
H1055=	**RUSSELL**	**ARBITRATION OF SEED CLAIMS**	***R -CH. SL 98-0210**	**09-21-98**	**10-07-98**
H1057=	GRADY	EXEMPT AUDIOVISUAL MASTERS	*R -CH. SL 97-0521	06-02-97	07-01-97
H1061	MCCOMBS	DISABLED SPORTSMAN LICENSES	*R -CH. SL 97-0326	06-10-97	07-02-97
H1082	SUTTON	NATIVE AMERICAN PLATES/HOUSING	*R -CH. SL 98-0155	07-14-97	09-02-98

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1097	**PRESTON**	**FISHERIES REFORM ACT-2**	***R -CH. SL 97-0400**	**07-23-97**	**08-04-97**
H1107	NEELY	FACILITY AUTHORITIES	*R -CH. SL 97-0068	05-14-97	05-15-97
H1108	MCMAHAN	BREW ON PREMISES	*R -CH. SL 97-0467	06-18-97	07-17-97
H1110	MCMAHAN	LANDSCAPE ARCHITECTS	*R -CH. SL 97-0406	07-17-97	07-31-97
H1114	EDDINS	SWIFT CREEK MANAGEMENT PLAN	*R -CH. SL 98-0192	07-31-97	08-07-97
H1121	**MCCOMAS**	**BROWNFIELD PROPERTY REUSE ACT**	***R -CH. SL 97-0357**	**07-03-97**	**07-17-97**
H1126	MINER	NO SALES TAX ON PAY PHONES	*R -CH. SL 98-0197	07-17-97	09-24-98
H1137	CULP	SOIL AND WATER CONSERVATION PLATES	*R -CH. SL 97-0477	07-14-97	08-20-97
H1156	MORRIS	SPECIAL PLATES	*R -CH. SL 97-0484	07-14-97	08-04-97
H1157	MORRIS	VARIOUS CORPORATE TAX LAW CHANGES	*R -CH. SL 97-0439	06-02-97	07-10-97
H1158	HUNTER R	REDUCE PROPERTY TAX/ANTIQUE PLANES	*R -CH. SL 97-0355	05-19-97	07-17-97
H1187	DECKER	COUNTY/CITY SALES TAX EXEMPTION	*S -REF TO COM ON FINANCE	07-21-97	
H1231	MINER	LOCAL TRANSIT REVENUE OPTIONS	*R -CH. SL 97-0417	07-28-97	08-04-97
H1246=	HOWARD	MODIFY DAVIE ROOM TAX USE	R -CH. SL 98-0014	06-15-98	06-18-98
H1248=	BAKER	TOBACCO SETTLEMENTS PAYMENTS	*R -CH. SL 98-0191	07-01-98	08-20-98
H1248=	BAKER	TOBACCO SETTLEMENTS PAYMENTS	*R -CH. SL 98-0191	08-26-98	09-15-98
H1260	IVES	FLOODPLAIN MANAGEMENT	*R -CH. SL 98-0172	09-16-98	09-17-98
H1272	RAYFIELD	NO FEE FOR PURPLE HEART PLATES	*S -REF TO COM ON FINANCE	08-12-98	
H1274	DICKSON	GASTONIA SPECIAL ASSESSMENTS	R -CH. SL 98-0025	06-22-98	07-01-98
H1275	MITCHELL	STATESVILLE AIRPORT LEASE LENGTH	R -CH. SL 98-0102	08-05-98	08-12-98
H1278	BADDOUR	CERTAIN COUNTIES SCH. ACQUISITION-3	*R -CH. SL 98-0033	06-25-98	07-01-98
H1284	BROWN	CERTAIN SCHOOL ACQUISITIONS	*R -CH. SL 98-0048	06-16-98	07-01-98
H1285=	STARNES	REVALUATION & ANNEX TAX NOTICE	*S -REF TO COM ON FINANCE	06-18-98	
H1307	THOMPSON	BANNER ELK DEED RECORDING	*R -CH. SL 98-0073	07-20-98	07-30-98
H1309	THOMPSON	BANNER ELK ANNEXATIONS	*R -CH. SL 98-0077	08-03-98	08-04-98
H1312	GOODWIN	MOUNT GILEAD UTILITY BILLS	S -REF TO COM ON FINANCE	08-11-98	
H1318	NEELY	NONRESIDENT TAX COLLECTION	*R -CH. SL 98-0162	06-10-98	09-01-98
H1326=	GRAY	UPDATE IRC REF./CONFORM GIFT TAX	*R -CH. SL 98-0171	08-13-98	09-15-98
H1347	SHUBERT	PROHIBIT INTERNET TAXATION	*S -REF TO COM ON FINANCE	09-10-98	
H1352	CAPPS	REPEAL CABARRUS INITIATIVE LAW	R -CH. SL 98-0062	06-01-98	07-22-98

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1356=	REYNOLDS	ELECTRONIC COMMERCE ACT	*R -CH. SL 98-0127	07-15-98	07-30-98
H1367	HILL	SALES TAX CHANGES	*R -CH. SL 98-0121	06-15-98	08-04-98
H1369=	RAYFIELD	COMM. COLL. LEASE PURCHASE AUTHORITY	*R -CH. SL 98-0111	08-03-98	08-05-98
H1401	DECKER	PLEASANT GARDEN BOUNDARIES	R -CH. SL 98-0205	08-05-98	10-27-98
H1402	CREECH	NEUSE BUFFERS/OTHER ENV. AMENDS	*R -CH. SL 98-0221	10-27-98	10-27-98
H1422	WILSON C	MAKE CREDITS CONSTITUTIONAL	R -CH. SL 98-0100	07-01-98	08-04-98
H1429=	WILSON C	SET REG. FEES/COMPANY EXAMS	*S -PASSED 3RD READING	09-21-98	09-24-98
H1448=	PRESTON	MARINE FISHERIES AMENDMENTS	*R -CH. SL 98-0225	09-21-98	09-24-98
H1475	REDWINE	OCEAN ISLE BEACH ANNEXATION	R -CH. SL 98-0034	06-23-98	07-01-98
H1489=	NEELY	LOCAL TAX INFORMATION/REFUNDS	*R -CH. SL 98-0139	08-20-98	09-01-98
H1490=	WEATHERLY	EXTEND SUBMERGED LAND CLAIMS	R -CH. SL 98-0179	09-21-98	09-24-98
H1491=	WEATHERLY	CONSERVATION EASEMENTS TAX CREDIT	*S -REF TO COM ON FINANCE	09-07-98	
H1497	BUCHANAN	CRANBERRY INCORPORATED	*R -CH. SL 98-0091	08-05-98	08-06-98
H1502=	GRAY	UNC NONAPPROPRIATED CAPITAL PROJECTS	*R -CH. SL 98-0140	08-06-98	09-01-98
H1504	SUTTON	PEMBROKE ANNEXATION	*R -CH. SL 98-0039	07-01-98	07-08-98
H1518	EDDINS	EAGLE SCOUT/GOLD AWARD PLATES	*R -CH. SL 98-0160	08-05-98	09-02-98
H1527	REDWINE	YAUPON BEACH SPECIAL ASSESSMENTS	R -CH. SL 98-0206	07-09-98	10-27-98
H1528	REDWINE	LONG BEACH ROOM TAX	*R -CH. SL 98-0207	06-24-98	10-26-98
H1528	REDWINE	LONG BEACH ROOM TAX	*R -CH. SL 98-0207	10-27-98	10-27-98
H1529=	BROWN	HORSE PROMOTION ASSESSMENT	*R -CH. SL 98-0154	07-27-98	08-06-98
H1533	CRAWFORD	HALIFAX/REGIONAL AIRPORT	*R -CH. SL 98-0130	08-19-98	09-01-98
H1544	GARDNER	RAISE COURT FEES	*S -REF TO COM ON FINANCE	07-20-98	
H1546	TOLSON	ACCIDENT REPORTS/WEEDY LOTS	*R -CH. SL 98-0108	07-22-98	08-06-98
H1549	OWENS	CURRITUCK/BEACH DRIVING PENALTY	R -CH. SL 98-0064	07-14-98	07-22-98
H1556	DAVIS D	DUNN EXTRATERRITORIAL JURISDICTION	R -CH. SL 98-0028	06-30-98	07-01-98
H1568	YONGUE	ST. PAULS/STATESVILLE OCCUPANCY TAX	*R -CH. SL 98-0112	07-22-98	08-04-98
H1579	HIGHTOWER	MONTGOMERY DELINQUENT UTILITY BILL	S -REF TO COM ON FINANCE	07-27-98	
H1587	BARBEE	STANLY/LOCUST UTILITY BILLS	*R -CH. SL 98-0084	07-06-98	07-14-98
H1594=	WEATHERLY	FRANCHISE DISTRIBUTION PAYMENT	S -RE-REF COM ON FINANCE	06-16-98	07-01-98
H1594=	WEATHERLY	FRANCHISE DISTRIBUTION PAYMENT	S -RE-REF COM ON FINANCE	07-07-98	

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1602	BONNER	ROWLAND CHARTER REVISION	R -CH. SL 98-0105	07-29-98	08-12-98
H1611	WAINWRIGHT	CARTERET-CRAVEN BOUNDARY	R -CH. SL 98-0049	07-08-98	07-15-98
H1617	MITCHELL	POULTRY COMPOSTING TAX CREDIT	*R -CH. SL 98-0134	08-06-98	08-20-98
H1629	CULP	ASHEBORO ANNEXATIONS	*R -CH. SL 98-0203	08-05-98	10-06-98
H1633	BUCHANAN	SPRUCE PINE/LK. WACCAMAW LIMITS	*R -CH. SL 98-0152	09-15-98	09-17-98
H1637	SMITH	CAPE CARTERET ANNEXATION REPEAL	*R -CH. SL 98-0041	07-01-98	07-08-98
H1638	SMITH	MOREHEAD CITY SATELLITE ANNEXATIONS	*R -CH. SL 98-0042	07-01-98	07-08-98
H1660=	MILLER G	CITY OF DURHAM STORMWATER FEES	S -REF TO COM ON FINANCE	06-29-98	
H1720=	**CULPEPPER**	**ADOPTION & SAFE FAMILIES ACT/FUNDS**	***R -CH. SL 98-0229**	**10-13-98**	**10-21-98**
H1737=	DICKSON	NCSU CENTENNIAL CAMPUS	*R -CH. SL 98-0159	09-02-98	09-15-98
S 25	HORTON	REDUCE FOOD TAX	S -REF TO COM ON FINANCE	02-03-97	
S 33	COCHRANE	REVENUE LAWS TECHNICAL CHANGES	*R -CH. SL 97-0006	02-03-97	02-19-97
S 34	COCHRANE	ADJUST CITY RECEIPTS TAX SHARE	*R -CH. SL 97-0118	02-03-97	04-28-97
S 36	KERR	UNIFORM TAX ON PIPED NATURAL GAS	S -REF TO COM ON FINANCE	02-03-97	
S 39	**SHAW L**	**MODIFY SETOFF DEBT COLLECTION**	***R -CH. SL 97-0490**	**04-01-97**	**04-09-97**
S 39	**SHAW L**	**MODIFY SETOFF DEBT COLLECTION**	***R -CH. SL 97-0490**	**07-29-97**	**08-04-97**
S 41	WEBSTER	NO SALES TAX ON PRESCRIPTION DRUGS	S -REF TO COM ON FINANCE	02-03-97	
S 48=	COCHRANE	CREDIT FOR LONG-TERM CARE INSURANCE	S -REF TO COM ON FINANCE	02-06-97	
S 56=	ALLRAN	CATAWBA ANNEXATIONS	*S -RE-REF COM ON FINANCE	02-24-97	
S 59=	BALLANCE	LOCAL SCHOOL ACQUISITION	*R -CH. SL 97-0024	02-20-97	03-12-97
S 69	FOXX	STOKES SCHOOL ACQUISITION	*R -CH. SL 97-0190	02-20-97	03-12-97
S 77=	WINNER	SALES TAX REFUNDS FOR SCHOOLS	*H -CAL PURSUANT RULE 36(A)	02-10-97	06-23-98
S 82	WEBSTER	REFUND INTANGIBLES TAX/INTEREST	S -REF TO COM ON FINANCE	02-11-97	
S 93=	HOYLE	MODIFY/EXTEND PORTS TAX CREDIT	*S -RE-REF COM ON APPROPR	02-12-97	04-22-97
S 97=	**KERR**	**INTERSTATE AUDITORS/REGULATORY FUND**	***S -RE-REF COM ON APPROPR**	**03-03-97**	**03-05-97**
S 98	KERR	TAX AT RACK IMPROVEMENTS	R -CH. SL 97-0060	02-12-97	02-19-97
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	02-13-97	02-26-97
S 123=	BALLANTINE	EXEMPT AUDIOVISUAL MASTERS	S -RE-REF COM ON APPROPR	02-17-97	04-01-97
S 124	ODOM	AMEND WHITE GOODS TAX	*R -CH. SL 98-0024	02-17-97	05-08-97
S 127=	ODOM	DRY-CLEANING SOLVENT CLEANUP ACT	S -REF TO COM ON FINANCE	02-17-97	

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 147=	WINNER	INCREASE FEE BIRTH/DEATH CERTIF.	S -REF TO COM ON FINANCE	02-17-97	
S 149=	COOPER	GRADUATED DRIVERS LICENSES	*S -RE-REF COM ON FINANCE	03-05-97	
S 153=	ODOM	SCRAP TIRE DISPOSAL TAX AMEND.	*R -CH. SL 97-0209	03-04-97	04-07-97
S 157=	HARTSELL	CORPORATE AMENDMENTS	*R -CH. SL 97-0485	02-25-97	04-07-97
S 157=	HARTSELL	CORPORATE AMENDMENTS	*R -CH. SL 97-0485	08-11-97	08-14-97
S 158=	**HARTSELL**	**ADMINISTRATIVE DISSOLUTION/REPORT**	***S -RE-REF COM ON APPROPR**	**03-11-97**	**04-14-97**
S 163	HARTSELL	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	03-04-97	
S 165=	HOYLE	INCREASE CHARITY TAX CREDIT	S -REF TO COM ON FINANCE	02-17-97	
S 166=	HOYLE	EXPAND CORP. CHARITABLE DEDUCTION	S -REF TO COM ON FINANCE	02-17-97	
S 168	HOYLE	INCREASE NURSES FEES	*R -CH. SL 97-0384	02-17-97	04-10-97
S 176=	**KINNAIRD**	**CONSERVATION EASEMENTS/TAX CREDIT**	**S -REF TO COM ON FINANCE**	**02-18-97**	
S 179	BLUST	EXEMPT ALL INTANGIBLE PROPERTY	S -REF TO COM ON FINANCE	02-18-97	
S 185=	HOYLE	NO TAX ON INTANGIBLE PROPERTY	S -REF TO COM ON FINANCE	02-19-97	
S 186	FOXX	DELAY GASTON PROPERTY TAX INTEREST	*R -CH. SL 98-0067	07-08-98	
S 197=	WELLONS	REPEAL SUNSET ON FICA SAVING USE	S -REF TO COM ON FINANCE	02-20-97	
S 198=	JENKINS	HENDERSON CO. ANNEXATION AGREEMENTS	R -CH. SL 97-0188	03-06-97	03-19-97
S 232	KERR	CLEAN WATER BONDS	*S -HELD AS FILED	02-24-97	04-17-97
S 237	PERDUE	MANICURISTS LICENSING CHANGES	S -RE-REF COM ON FINANCE	04-23-97	
S 245	LEDBETTER	INSTALLMENT PURCHASE/SEWER DIST.	*R -CH. SL 98-0117	02-26-97	04-22-97
S 249	CARPENTER R	BOND PAYMENT CHANGE	*R -CH. SL 97-0307	02-26-97	03-18-97
S 253	WINNER	TELEPHONE CONSUMER PROTECTION	*R -CH. SL 97-0482	04-08-97	04-17-97
S 261=	ODOM	WELL CONTRACTORS CERTIFICATION	*S -RE-REF COM ON FINANCE	06-03-97	
S 262=	ODOM	HUNTERSVILLE ANNEXATION AGREEMENT	*R -CH. SL 97-0266	02-27-97	03-19-97
S 266	LEDBETTER	PRODUCTION AND SALE OF RED DEER	*R -CH. SL 97-0142	03-18-97	04-10-97
S 271	**SHAW L**	**SMALL BUSINESS CAPITAL/GROWTH ACT**	***S -RE-REF COM ON APPROPR**	**02-27-97**	**06-04-97**
S 280	ODOM	EARNED INCOME TAX CREDIT	S -REF TO COM ON FINANCE	03-03-97	
S 289=	HOYLE	RAISE HOUSING BOND LIMIT	R -CH. SL 97-0013	03-04-97	03-25-97
S 297=	GULLEY W	AMEND CHARTER SCHOOL LAWS	*R -CH. SL 97-0430	04-28-97	04-28-97
S 312	JORDAN	REGULATE CHECK CASHING	*R -CH. SL 97-0391	04-02-97	04-08-97
S 314=	WEBSTER	PUBLIC COLLEGE SALES TAX REFUNDS	S -REF TO COM ON FINANCE	03-05-97	

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 315=	WEBSTER	SCHOOL DISTRICT SALES TAX REFUNDS	S -REF TO COM ON FINANCE	03-05-97	
S 316=	KERR	AMEND BILL LEE ACT	*R -CH. SL 97-0277	03-05-97	03-12-97
S 316=	KERR	AMEND BILL LEE ACT	*R -CH. SL 97-0277	05-15-97	05-20-97
S 317	WINNER	LOCAL GOVERNMENT DEBT CHANGES	*H -REF TO COM ON FINANCE	03-05-97	04-14-97
S 323	HORTON	HISTORIC REHABILITATION TAX CREDIT	*R -CH. SL 97-0139	03-06-97	04-28-97
S 328=	KINNAIRD	REDUCE FOOD TAX BY TWO CENTS	S -REF TO COM ON FINANCE	03-10-97	
S 339	CONDER	CREDIT FOR TIER ONE COUNTIES	H -REF TO COM ON COMM	03-10-97	05-07-97
S 356=	FOXX	REIDSVILLE ANNEXATIONS	*R -CH. SL 97-0343	03-19-97	04-17-97
S 360	ALBERTSON	BOAT NUMBER FEES	*H -RE-REF COM ON FINANCE	06-12-97	07-01-97
S 363	PAGE	HARNETT COMM. COLL. ACQUISTION	R -CH. SL 97-0042	03-24-97	04-02-97
S 365=	RUCHO	PROPERTY TAX CLERICAL ERROR	S -REF TO COM ON FINANCE	03-11-97	
S 374	ODOM	CHIROPRACTOR SUPPLEMENTS EXEMPT	*R -CH. SL 97-0369	03-11-97	05-26-97
S 388	HOYLE	NO BACK INTANGIBLES TAX ASSESSMENT	R -CH. SL 97-0017	03-13-97	03-19-97
S 389	HOYLE	BASEBALL PARK DISTRICTS	*R -CH. SL 97-0380	03-13-97	04-03-97
S 390	ODOM	HUNTERSVILLE ANNEXATION	*R -CH. SL 97-0267	03-26-97	04-07-97
S 396	RAND	DOWNTOWN DEVELOPMENT ZONE IMPROVEMEN	*H -REF TO COM ON RULES	07-07-98	07-23-98
S 404=	KINCAID	SCHOOL BOND INTEREST USE	S -REF TO COM ON FINANCE	03-17-97	
S 421=	COOPER	LOCAL OPTION HOMESTEAD EXEMPTION	*HF-FAILED 2ND READING	03-18-97	04-22-97
S 424	MILLER B	WAKE ANNEXATIONS	*SA-CONF REPORT ADOPTED	03-27-97	04-09-97
S 425	MILLER B	REFRIGERATION CONTRACTORS	*H -RE-REF COM ON RULES	03-27-97	04-09-97
S 426	HOYLE	MAGISTRATES/TRUCK SPECIAL PLATES	*R -CH. SL 97-0461	04-22-97	05-19-97
S 427	HOYLE	APPLE/XMAS TREE TRUCK WEIGHTS.	*R -CH. SL 98-0177	04-16-97	04-29-97
S 439=	REEVES	SECURITIES/INVESTMENT ADVISERS	*R -CH. SL 97-0419	04-14-97	05-22-97
S 441	PLYLER	HANDGUN FEE REALLOCATION	*R -CH. SL 97-0470	03-20-97	04-17-97
S 446	LEDBETTER	LOW INCOME AND DECEASED RETIREES	S -REF TO COM ON FINANCE	03-20-97	
S 447	WEINSTEIN	LUMBERTON ECONOMIC DEV. DIST.	*R -CH. SL 97-0182	03-20-97	04-02-97
S 455=	HOYLE	IMPROVE HMO SERVICES	*R -CH. SL 97-0474	08-13-97	08-21-97
S 466	HARTSELL	TAX EXEMPT PARENTAL SAVINGS TRUST	*R -CH. SL 97-0328	03-24-97	05-22-97
S 469	HARTSELL	CABARRUS REVENUE OPTIONS/SCHOOLS	S -REF TO COM ON FINANCE	03-24-97	
S 475=	PERDUE	FUND FOR DISPLACED HOMEMAKERS	*R -CH. SL 98-0219	03-25-97	06-19-97

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 477	PERDUE	SEPTIC TANK SYSTEMS BMPS	*S -RE-REF COM ON FINANCE	04-24-97	
S 480=	LUCAS	INCREASE RABIES TAG FEE	S -REF TO COM ON FINANCE	03-25-97	
S 482=	LUCAS	PERMIT FEES	S -REF TO COM ON FINANCE	03-25-97	
S 483=	LUCAS	PHYSICIAN SERVICES FEE	*R -CH. SL 97-0508	05-15-97	06-26-97
S 484=	LUCAS	VITAL RECORDS ACCESS	*S -RE-REF COM ON FINANCE	04-29-97	
S 487	FORRESTER	CREDIT FOR HIRING RESERVE & GUARD	S -REF TO COM ON FINANCE	03-25-97	
S 489=	LEDBETTER	MADISON OCCUPANCY TAX	S -REF TO COM ON FINANCE	03-25-97	
S 500=	ODOM	MTN. ISLAND LAKE MARINE COMMISSION	*R -CH. SL 97-0257	04-02-97	04-09-97
S 501=	GULLEY W	ROXBORO CHARTER	*S -RE-REF COM ON FINANCE	04-24-97	
S 508	PLYLER	TURKEY GROWER USE VALUE EXCEPTION	*R -CH. SL 97-0272	04-29-97	05-07-97
S 516	BALLANCE	LEAD-BASED PAINT MGMT.	*R -CH. SL 97-0523	03-26-97	06-02-97
S 518	PERDUE	LOCAL 1-YEAR 1 CENT SALES TAX/VOTE	S -REF TO COM ON FINANCE	03-26-97	
S 522	KINCAID	AVERY OCCUPANCY TAX	S -REF TO COM ON FINANCE	03-26-97	
S 529	RAND	HOPE MILLS/WEAVERVILLE ANNEXATIONS	*R -CH. SL 97-0151	04-09-97	04-21-97
S 534	SHAW R	PLEASANT GARDEN INCORPORATED	R -CH. SL 97-0344	06-26-97	07-01-97
S 548	FOXX	STOKES/DELINQUENT PROP. TAXES	S -REF TO COM ON FINANCE	07-09-97	
S 559	PLYLER	INCREASE COURT COSTS	S -REF TO COM ON FINANCE	04-01-97	
S 570	DALTON	CLEAN WATER LICENSE PLATE	*H -RE-REF COM ON FINANCE	04-16-97	05-19-97
S 578	FOXX	MOUNT AIRY/AVERY OCCUPANCY TAX	*H -RE-REF COM ON RULES	04-01-97	04-16-97
S 585	WEINSTEIN	LUMBERTON/SHELBY ROOM TAX CHANGES	*R -CH. SL 97-0361	04-01-97	04-16-97
S 585	WEINSTEIN	LUMBERTON/SHELBY ROOM TAX CHANGES	*R -CH. SL 97-0361	04-22-97	04-23-97
S 594	RAND	LOCAL SALES TAX FOR SCHOOLS	*H -REF TO COM ON RULES	07-28-97	08-26-97
S 613	MILLER B	INSURANCE COMPANY AUDITS AND EXAMS	*H -REF TO COM ON RULES	05-01-97	05-07-97
S 615	HORTON	KERNERSVILLE VEHICLE TAX	H -CAL PURSUANT RULE 36(A)	04-01-97	04-17-97
S 624	MARTIN W	SEDALIA INCORPORATED	*R -CH. SL 97-0444	08-13-97	08-14-97
S 629=	WELLONS	EXPEDITE JOHNSTON SCHOOL CONSTR.	*S -RE-REF COM ON FINANCE	07-23-97	
S 630=	KINNAIRD	CARRBORO CHARTER AMENDMENTS	S -REF TO COM ON FINANCE	04-01-97	
S 633=	KINNAIRD	CHATHAM CONVEYANCE TAX	S -REF TO COM ON FINANCE	04-01-97	
S 635	SHAW L	EXPAND INTERSTATE HIGHWAYS	S -RE-REF COM ON FINANCE	04-02-97	
S 639	GULLEY W	SHERIFF'S REGISTRATION PLATES-2	S -RE-REF COM ON FINANCE	04-23-97	

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 649	MILLER B	LOBBYIST PENALTY	*H -CAL PURSUANT RULE 36(A)	04-02-97	05-20-97
S 654	JORDAN	ORTHOPAEDIC PHYSICIAN ASSISTANTS	S -REF TO COM ON FINANCE	04-02-97	
S 660=	HOYLE	LICENSE ATHLETIC TRAINERS	*R -CH. SL 97-0387	04-02-97	05-15-97
S 660=	HOYLE	LICENSE ATHLETIC TRAINERS	*R -CH. SL 97-0387	05-19-97	05-20-97
S 687=	RAND	REDUCE FARM/INDUSTRY FUEL TAX	S -REF TO COM ON FINANCE	04-03-97	
S 689=	LUCAS	CREDIT/HIRE WELFARE RECIPIENTS	S -REF TO COM ON FINANCE	04-03-97	
S 696	PERDUE	GRANTSBORO INCORPORATED-1	*H -CAL PURSUANT RULE 36(A)	07-09-97	07-17-97
S 696	PERDUE	GRANTSBORO INCORPORATED-1	*H -CAL PURSUANT RULE 36(A)	07-21-97	07-21-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS	*R -CH. SL 97-0429	04-07-97	04-29-97
S 701	ODOM	BREAST CANCER RESEARCH	S -REF TO COM ON FINANCE	04-07-97	
S 711=	SOLES	GRANTSBORO INCORPORATED-2	*R -CH. SL 97-0446	04-24-97	05-12-97
S 712	REEVES	SUBSTANCE ABUSE SPECIALISTS	*R -CH. SL 97-0492	04-07-97	06-02-97
S 719=	KERR	GOLDSBORO ROOM TAX USE	*R -CH. SL 97-0447	04-07-97	04-10-97
S 724=	MILLER B	WAKE TOWNS IMPACT FEES	S -REF TO COM ON FINANCE	04-07-97	
S 727	MILLER B	FOOD TAX REDUCTION/FEE CHANGES	*R -CH. SL 97-0475	04-07-97	04-14-97
S 727	MILLER B	FOOD TAX REDUCTION/FEE CHANGES	*R -CH. SL 97-0475	06-02-97	08-14-97
S 730	BALLANCE	INDUSTRIAL REVENUE BOND CHANGES	*R -CH. SL 97-0463	04-07-97	06-10-97
S 737	HARTSELL	KANNAPOLIS PROPERTY ACQUISTIONS	S -REF TO COM ON FINANCE	04-07-97	
S 738	HARTSELL	UNEMPLOYMENT BENEFITS/TAX CHANGES	S -REF TO COM ON FINANCE	04-07-97	
S 781	KERR	AMEND COST OF ADMINISTRATION	S -REF TO COM ON FINANCE	04-10-97	
S 784	WEBSTER	CONFORM TAX EXTENSION RULES	*R -CH. SL 97-0300	04-10-97	05-22-97
S 793=	CONDER	OPTOMETRY CHANGES	S -RE-REF COM ON FINANCE	07-17-97	
S 805	RAND	PORTS AUTHORITY SALES TAX REFUND	S -REF TO COM ON FINANCE	04-10-97	
S 812	JENKINS	SMOKY MOUNTAINS SPECIAL PLATE	R -CH. SL 97-0427	04-16-97	05-15-97
S 816	CONDER	ALLIGATOR/YELLOW PERCH PRODUCTION	*R -CH. SL 97-0198	04-14-97	04-29-97
S 817=	SHAW L	REINVESTMENT TAX CREDITS	S -REF TO COM ON FINANCE	04-14-97	
S 826=	MILLER B	SCHOOL BOARD "QUICK TAKE"	*S -RE-REF COM ON ST GVT	04-14-97	04-29-97
S 829=	LUCAS	CREDIT/HIRE WELFARE RECIPIENTS	S -REF TO COM ON FINANCE	04-14-97	
S 833=	KERR	UNC RECEIPT-SUPPORTED CAPITAL PROJ.	*R -CH. SL 97-0425	04-14-97	04-28-97
S 841	HOYLE	MODIFY CORPORATE DIVIDEND TAXATION	*S -RE-REF COM ON FINANCE	04-15-97	08-04-97

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 841	HOYLE	MODIFY CORPORATE DIVIDEND TAXATION	*S -RE-REF COM ON FINANCE	08-28-97	
S 847	ODOM	NO SALES TAX/REUSEABLE CONTAINERS	*R -CH. SL 97-0397	04-15-97	05-19-97
S 850	KINNAIRD	SPAY/NEUTER PROGRAM	S -REF TO COM ON FINANCE	04-15-97	
S 857	LEE	UNC BONDS	S -REF TO COM ON FINANCE	04-15-97	
S 858=	LEE	INCREASE SCHOOL ADMIN EXAM FEE	S -REF TO COM ON FINANCE	04-15-97	
S 861	LEE	DISPENSING OPTICIANS	*R -CH. SL 97-0424	04-15-97	05-12-97
S 867	RAND	1997 LOTTERY	S -REF TO COM ON FINANCE	04-15-97	
S 872	KERR	YOUTH WORKERS AT ABC PERMITTEES	*HF-REPTD UNFAV	04-23-97	04-29-97
S 873	KERR	LOCAL GOVERNMENT DEBT CHANGES	*R -CH. SL 98-0222	07-07-98	07-14-98
S 874=	**KERR**	**RESOLUTION OF SEED CLAIMS**	***S -RE-REF COM ON FINANCE**	**06-03-97**	
S 875	KERR	REVISE RECORDS LAWS-2	*R -CH. SL 97-0309	04-24-97	05-22-97
S 882	WINNER	CIVIL PENALTIES LAW CLARIFIED	*R -CH. SL 98-0215	04-15-97	07-22-98
S 883	SHAW L	MANUFACTURED HOME PROPERTY TAX	S -REF TO COM ON FINANCE	04-15-97	
S 886=	JORDAN	HIRE AMONG MOST QUALIFIED	*R -CH. SL 97-0520	07-14-97	08-04-97
S 913	GULLEY W	LOCAL TRANSIT REVENUE OPTIONS	S -REF TO COM ON FINANCE	04-17-97	
S 915	KERR	INTANGIBLES TAX REMEDY	*H -REF TO COM ON FINANCE	04-17-97	06-26-97
S 916	KERR	COSMETOLOGISTS	*R -CH. SL 98-0230	04-17-97	05-15-97
S 916	KERR	COSMETOLOGISTS	*R -CH. SL 98-0230	05-19-97	05-20-97
S 916	KERR	COSMETOLOGISTS	*R -CH. SL 98-0230	09-18-98	10-01-98
S 921	ODOM	CHARITABLE SOLICITATIONS EXEMPTION	*R -CH. SL 97-0329	04-17-97	05-08-97
S 925=	SHAW L	UNC MILITARY TUITION	S -REF TO COM ON FINANCE	04-17-97	
S 926	COOPER	SMART START FUND	S -REF TO COM ON FINANCE	04-17-97	
S 938=	JORDAN	CONSTRUCTION WORKER TRAINING CREDIT	*H -REF TO COM ON WEL REF	04-17-97	06-11-97
S 940=	**ODOM**	**FEDERAL MATCH REQUIRED 9/30/98-2**	***S -REC TO CONCUR H COM SUB**	**04-17-97**	**04-29-97**
S 942	RAND	BARBERS	H -REF TO COM ON FINANCE	04-17-97	05-07-97
S 956=	HOYLE	VENTURE CAPITAL INVESTMENT INCENTIVE	S -RE-REF COM ON FINANCE	07-22-97	
S 965	MILLER B	INSURANCE DEPARTMENT FEES	S -REF TO COM ON FINANCE	04-17-97	
S 971	REEVES	SELF-EMPLOYED HEALTH INS DEDUCTION	S -REF TO COM ON FINANCE	04-21-97	
S 974	FOXX	ESC LAW CHANGES	*R -CH. SL 97-0398	04-21-97	05-07-97
S 979	COOPER	SCHOOL PROPERTY FINANCING	S -REF TO COM ON FINANCE	04-21-97	

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: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1001	KINNAIRD	EXPAND AMUSEMENT TAX EXEMPTION	*R -CH. SL 98-0096	04-21-97	07-10-97
S1007	GULLEY W	TRANSIT AUTH VEHICLE RENTAL TAX	S -REF TO COM ON FINANCE	04-21-97	
S1008	HOYLE	INSULATING SPECIALTY CONTRACTORS	S -RE-REF COM ON FINANCE	04-29-97	
S1010=	HOYLE	LOCAL GOV. FUNDING AGREEMENTS	S -REF TO COM ON FINANCE	04-21-97	
S1012=	RUCHO	PUBLICATION OF APPELLATE DECISIONS	S -RE-REF COM ON FINANCE	04-30-97	
S1017	ALBERTSON	ENVIRONMENTAL/AGRICULTURE ACT	S -RE-REF COM ON FINANCE	06-19-97	
S1019	COCHRANE	EMPLOYEE GED TAX INCENTIVE	S -REF TO COM ON FINANCE	04-21-97	
S1025	BLUST	INCREASE CIVIL PROCESS FEES	S -REF TO COM ON FINANCE	04-21-97	
S1029	MILLER B	INSOLVENT INSURER REVENUE BONDS	*S -RE-REF COM ON FINANCE	05-22-97	
S1035	KERR	MODIFY FOOD TAX/MERCHANT'S DISCT.-2	*S -RE-REF COM ON APPROPR	04-21-97	05-22-97
S1037	KERR	NC RAILROAD ACT	S -RE-REF COM ON FINANCE	06-03-97	
S1042	KINNAIRD	ESTHETICIAN LICENSURE	S -REF TO COM ON FINANCE	04-21-97	
S1062	HOYLE	PROPERTY TAX ON LEASEHOLDS	S -REF TO COM ON FINANCE	04-21-97	
S1064=	HOYLE	PROPERTY TAX INTEREST/STUDY	*R -CH. SL 97-0205	04-21-97	05-12-97
S1065	HOYLE	EXEMPT SEVERANCE PAY	*R -CH. SL 97-0525	07-02-97	08-18-97
S1073	HOYLE	AUCTIONEER AMENDMENTS	*H -REF TO COM ON RULES	06-04-97	07-10-97
S1092	HOYLE	REDUCE NORTH CAROLINA TAXES	*S -RE-REF COM ON FINANCE	05-12-98	05-13-98
S1092	HOYLE	REDUCE NORTH CAROLINA TAXES	*S -RE-REF COM ON FINANCE	06-03-98	
S1095	SHAW R	ABOLISH STATE SALES TAX ON FOOD	S -REF TO COM ON FINANCE	05-12-98	
S1096	SHAW R	ABOLISH INHERITANCE TAX	S -REF TO COM ON FINANCE	05-12-98	
S1102=	COCHRANE	MODIFY DAVIE ROOM TAX USE	S -REF TO COM ON FINANCE	05-13-98	
S1103	CARPENTER R	FRANKLIN ANNEXATION	R -CH. SL 98-0051	05-27-98	06-10-98
S1108=	KERR	LOWER UNEMPLOYMENT TAX IN 1999	S -REF TO COM ON FINANCE	05-13-98	
S1122	WEINSTEIN	BINGO STUDY RECOMMENDAIONS	*S -RE-REF COM ON FINANCE	07-29-98	
S1130=	ALLRAN	IMPROVE TORRENS LAW	S -REF TO COM ON FINANCE	05-28-98	
S1137	PLYLER	WESLEY CHAPEL INCORPORATED	*R -CH. SL 98-0043	06-10-98	06-15-98
S1150=	DALTON	AMEND LOCAL SALES TAX	*R -CH. SL 98-0186	06-08-98	06-23-98
S1166=	MARTIN R	FARMVILLE ANNEXATION	*R -CH. SL 98-0032	06-10-98	06-15-98
S1169=	BLUST	HOMESTEAD TAX REDUCTION	S -REF TO COM ON FINANCE	05-19-98	
S1197=	EAST	EXEMPT TOBACCO ASSISTANCE PAYMENTS	S -REF TO COM ON FINANCE	05-21-98	

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1199=	KERR	SET REGUL FEES/INCREASE VARIOUS FEES	*S -RE-REF COM ON FINANCE	05-21-98	06-25-98
S1199=	KERR	SET REGUL FEES/INCREASE VARIOUS FEES	*S -RE-REF COM ON FINANCE	09-28-98	10-07-98
S1199=	KERR	SET REGUL FEES/INCREASE VARIOUS FEES	*S -RE-REF COM ON FINANCE	10-13-98	
S1200=	KERR	PHARMACY PERSONNEL	H -REF TO COM ON INS	05-21-98	06-03-98
S1203=	WINNER	CHARLOTTE STORMWATER FEES	R -CH. SL 98-0066	05-21-98	06-10-98
S1222=	ODOM	MECK NECK	*R -CH. SL 98-0015	05-27-98	06-04-98
S1223	WEBSTER	SIMPLIFY/REDUCE PERSONAL INCOME TAX	S -REF TO COM ON FINANCE	05-21-98	
S1225	COCHRANE	READJUST CITIES RECEIPTS TAX SHARE	S -REF TO COM ON FINANCE	05-21-98	
S1226	COCHRANE	REVENUE LAWS TECHNICAL CHANGES	*R -CH. SL 98-0098	05-21-98	06-11-98
S1227=	KERR	UPDATE IRC REF./CONFORM GIFT TAX	S -RE-REF COM ON FINANCE	05-21-98	06-10-98
S1227=	KERR	UPDATE IRC REF./CONFORM GIFT TAX	S -RE-REF COM ON FINANCE	06-11-98	
S1229	KERR	ABOLISH INHERITANCE TAX WAIVERS	*R -CH. SL 98-0069	05-21-98	05-27-98
S1230	KERR	MOTOR FUEL TAX CHANGES	*R -CH. SL 98-0146	05-21-98	05-27-98
S1234	PHILLIPS	RAISE CRIMINAL COURT FEES	S -REF TO COM ON FINANCE	05-21-98	
S1239	HOYLE	STOP GOVERNOR/DENR SIGNING MOU	*HF-FAILED 2ND READING	05-21-98	06-04-98
S1239	HOYLE	STOP GOVERNOR/DENR SIGNING MOU	*HF-FAILED 2ND READING	06-10-98	09-02-98
S1241	HOYLE	AMENDMENTS TO REVENUE LAWS	*S -RE-REF COM ON FINANCE	05-21-98	06-04-98
S1241	HOYLE	AMENDMENTS TO REVENUE LAWS	*S -RE-REF COM ON FINANCE	06-16-98	07-23-98
S1241	HOYLE	AMENDMENTS TO REVENUE LAWS	*S -RE-REF COM ON FINANCE	10-13-98	
S1242=	HOYLE	WIRELESS TELEPHONE SERVICE ACT	*R -CH. SL 98-0158	06-16-98	07-09-98
S1252	HOYLE	SIMPLIFY PRIVILEGE LICENSE TAX	*R -CH. SL 98-0095	05-21-98	06-16-98
S1263	**PLYLER**	**UNIONVILLE CHARTER REVISED**	***R -CH. SL 98-0151**	**07-09-98**	**07-15-98**
S1278=	**RAND**	**PSO MEDICARE LICENSING**	**S -REF TO COM ON FINANCE**	**05-27-98**	
S1284=	ALBERTSON	1998 MARINE FISHERIES AMENDMENTS	*S -RE-REF COM ON FINANCE	09-01-98	
S1289=	GULLEY W	CLARIFY TRANSIT AUTHORITY DEBT	*R -CH. SL 98-0070	05-27-98	06-10-98
S1291=	GULLEY W	TRANSPORTATION CORRIDORS	*R -CH. SL 98-0184	07-15-98	07-16-98
S1291=	GULLEY W	TRANSPORTATION CORRIDORS	*R -CH. SL 98-0184	07-16-98	07-22-98
S1292=	REEVES	RENTAL TAX INFORMATION SHARING	S -REF TO COM ON FINANCE	05-27-98	
S1293=	RUCHO	MODIFY MECKLENBURG TAX PENALTY	S -REF TO COM ON FINANCE	05-27-98	
S1300=	ODOM	INSURANCE COMPANY EXAMS	*H -REF TO COM ON INS	06-08-98	07-08-98

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1312	ALLRAN	CERTAIN COUNTIES SCH. ACQUISITION-2	*R -CH. SL 98-0201	05-27-98	06-10-98
S1316=	KINNAIRD	CONSERVATION EASEMENTS TAX CREDIT	S -REF TO COM ON FINANCE	05-27-98	
S1327	DALTON	NO TAX ON GAS CITIES	*R -CH. SL 98-0022	05-27-98	06-10-98
S1330=	ODOM	WATER QUALITY FEES	S -REF TO COM ON FINANCE	05-27-98	
S1333	HARTSELL	LANDIS ANNEXATION	*R -CH. SL 98-0065	06-10-98	06-18-98
S1336=	ODOM	1998 GOV. DWI AMENDMENTS	*R -CH. SL 98-0182	07-21-98	08-03-98
S1349=	KERR	CLEAN BURNING FUEL RATE	S -REF TO COM ON FINANCE	05-27-98	
S1354	KERR	BONDS/CRITICAL INFRASTRUCTURE NEEDS	*R -CH. SL 98-0132	05-27-98	06-17-98
S1368	BALLANTINE	DELAY SUNSET ON TAX CREDITS	S -REF TO COM ON FINANCE	05-27-98	
S1385	GULLEY W	REFORM DEATH TAX	S -REF TO COM ON FINANCE	05-27-98	
S1390=	HOYLE	BRANDED TITLE CLARIFICATION	S -REF TO COM ON FINANCE	05-27-98	
S1393	HORTON	MODIFY HISTORIC REHAB CREDIT	S -REF TO COM ON FINANCE	05-27-98	
S1394=	**LUCAS**	**ADOPTION REGISTRY**	***S -RE-REF COM ON APPROPR**	**07-23-98**	**07-30-98**
S1397=	GULLEY W	DURHAM COUNTY STORMWATER FEES	*R -CH. SL 98-0060	05-27-98	06-10-98
S1399=	GULLEY W	CITY OF DURHAM/STORMWATER FEES	R -CH. SL 98-0052	05-27-98	06-10-98
S1400	CLARK	REPEAL STATE AND LOCAL FOOD TAX	S -REF TO COM ON FINANCE	05-27-98	
S1408	WELLONS	TAX RETURN DONATION FOR HABITAT	S -REF TO COM ON FINANCE	05-28-98	
S1410	SOLES	CHADBOURN ANNEXATION	*R -CH. SL 98-0053	05-28-98	06-18-98
S1426	RAND	INCREASE AUTOPSY FEE	S -RE-REF COM ON APPROPR	05-28-98	06-18-98
S1433	HOYLE	EXEMPT VOLUNTARY SEVERANCE PAY	S -REF TO COM ON FINANCE	05-28-98	
S1450	BALLANTINE	COMMUNITY FESTIVAL TAX EXEMPTION	S -RE-REF COM ON APPROPR	05-28-98	06-18-98
S1478	HORTON	FORSYTH COUNTY INVESTMENTS	*R -CH. SL 98-0044	05-28-98	06-10-98
S1479	HORTON	WINSTON-SALEM INVESTMENTS	R -CH. SL 98-0036	05-28-98	06-10-98
S1480	PAGE	TWO-THIRDS VOTE TO LEVY TAXES	S -REF TO COM ON FINANCE	05-28-98	
S1488=	BLUST	REFUND INTANGIBLES TAX TO ALL	S -REF TO COM ON FINANCE	05-28-98	
S1503	PERDUE	CREDIT/HIRE WORK FIRST RECIPIENT	S -REF TO COM ON FINANCE	05-28-98	
S1514	PLYLER	HEMBY BRIDGE INCORPORATED	*R -CH. SL 98-0143	05-28-98	07-01-98
S1551	GULLEY W	CHARTER SCHOOL BENEFITS	S -RE-REF COM ON PENSIONS	06-01-98	06-04-98
S1552	KERR	CHANGES TO NOTARY PUBLIC ACT	*R -CH. SL 98-0228	06-01-98	07-15-98
S1554	RAND	MODIFY CONTROLLED SUBSTANCES TAX	*R -CH. SL 98-0218	06-01-98	06-25-98

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: FINANCE — Valid Through 20-NOV-1998

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1556	RAND	AMEND EDUCATION FINANCE ACT	*R -CH. SL 98-0124	06-01-98	07-14-98
S1569=	HOYLE	ECONOMIC OPPORTUNITY ACT OF 1998	*R -CH. SL 98-0055	06-01-98	06-18-98
S1569=	HOYLE	ECONOMIC OPPORTUNITY ACT OF 1998	*R -CH. SL 98-0055	06-22-98	06-23-98
S1571	HOYLE	STUDY TICKET BROKERING	*S -RE-REF COM ON RULES &	06-01-98	08-05-98
S1577	BLUST	SIMPLIFY & REDUCE DEATH TAX	S -REF TO COM ON FINANCE	06-01-98	
S1594	LEE	TEACHER CERTIFICATION FEES.	*R -CH. SL 98-0167	06-10-98	06-24-98

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

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, MAY 12, 1998

3 P.M. - ROOM 544

SB 1092 - ELIMINATE STATE FOOD TAX - SENATOR HOYLE

SENATE FINANCE COMMITTEE

TUESDAY, MAY 12, 1998

3 O'CLOCK - ROOM 544 LOB

The Senate Finance Committee met on Tuesday May 12, 1998, at 3 o'clock p.m. in Room 544 with Senator Kerr presiding. There were 23 committee members present. Senator Kerr introduced the pages, Kristen Jones from Garner, sponsored by Sen. Wellons, and Niki Weston from Yanceyville, sponsored by Sen. Wellons. Linda Millsaps, replacing Warren Plonk, was also introduced to the committee. Included in the minutes is a bio for Ms. Millsaps.

SB 1092 Eliminate State Food Tax

Senator Hoyle was recognized to explain his bill and after a general discussion of the overall effect this bill would have on the General Fund and especially in regards to the Bailey decision, on motion by Senator Dannelly, the bill was given a Favorable Report by the committee. Copy of Bill, Explanation and Fiscal Note included in the minutes.

Senator Hoyle introduced his intern, Tres Barnhard, who will be working with the Finance Committee this session.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

LINDA MILLSAPS - FINANCE TEAM

Linda holds an B.S. in Political Science and History from American University in Washington, D.C.; a Master of Public Policy in Human Services from Harvard University; and, her Ph.D. is in progress in Political Science, State and Local Government from West Virginia University in Morgantown, WV. Before coming to Fiscal Research, she served as Community Development/Partnership Manager with the Department of Environment and Natural Resources. She has also served as Executive Director with the Caldwell County Chamber of Commerce and Executive Director of an entrepreneurship training program (WV REAL) through the West Virginia University Extension Service.

FILED - SENATE
MAY 1 1 1998
PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA S1092

SESSION 1997

S D

SENATE DRS8751-LC298(2.22)

Short Title: Eliminate State Food Tax. (Public)

Sponsors: Senators Hoyle, Kerr, Albertson, Ballance, Basnight, Cooper, Dalton, Dannelly, Gulley, Jenkins, Jordan, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD.

The General Assembly of North Carolina enacts:

Section 1. Effective November 1, 1998, G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of ~~two percent (2%)~~ one percent (1%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 2. Effective July 1, 1999, G.S. 105-164.4(a)(5) is repealed.

Section 3. Effective July 1, 1999, Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 4. Sections 2 and 3 of this act become effective July 1, 1999, and apply to sales made on or after that date. The remainder of this act becomes effective November 1, 1998, and applies to sales made on or after that date.

EXPLANATION OF SENATE BILL 1092:
Eliminate State Food Tax

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 12, 1998
SPONSOR: Senator Hoyle

Senate Bill 1092 reduces the State sales tax on food from 2% to 1%, effective November 1, 1998, and repeals the State sales tax on food, effective July 1, 1999. The bill also creates a new section to the Sales and Use Tax Article that exempts food from the State sales and use tax. This section is effective July 1, 1999.

In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. Last year, the General Assembly reduced the State sales tax on food from 3% to 2%, effective July 1, 1998. These reductions, as well as the reduction and then repeal of the tax in SB 1092, apply to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is subject to the reduced State sales tax rate.

Examples of food items that are subject to the reduced State sales tax rate are fruits, vegetables, bread, meat, fish, milk, snack foods such as candy, gum, soft drinks, and chips, distilled water, ice, tomato plants, fruit trees, and cold prepared food for home consumption. Items that are not considered food items under federal law and therefore remain subject to the 4% State sales tax include alcoholic beverages, tobacco products, pet food, prepared foods that are hot at the point of sale and are therefore ready for immediate consumption, such as a broiled chicken kept in a heated display case, and food, such as a hamburger, a pastry, or soup, that is marketed to be heated on the premises of the retailer in a microwave oven or other heating device.

Neither SB 1092 nor any of the past reductions in the food tax affect the local 2% sales tax on food.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1092

SHORT TITLE: Eliminate Food Tax

SPONSOR(S): Senators Hoyle, et al

FISCAL IMPACT

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

($Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
1% Repeal 11/1/98	**(53.9)**	**(92.2)**	**(95.0)**	**(97.9)**	**(100.8)**
1% Repeal 7/1/99	**____**	**(86.3)**	**(95.0)**	**(97.9)**	**(100.8)**
Total	**(53.9)**	**(178.5)**	**(190.0)**	**(195.8)**	**(201.6)**

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

EFFECTIVE DATE: The first reduction from 2% to 1% is effective November 1, 1998 and the second reduction from 1% to 0 is effective July 1, 1999.

BILL SUMMARY: The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1998. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. This proposed bill reduces the state tax from 2% to 1% on November 1, 1998 and from 1% to 0 on July 1, 1999.

ASSUMPTIONS AND METHODOLOGY: The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicates that the estimates used in previous fiscal notes are on target.

As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

With a November 1 effective date, the first year revenue loss is for eight months minus a lag between the retail sale and the remittance of the tax in November. The full year cost of the 1998 reduction will be in FY 1999-00. The July 1, 1999 reduction will also be less than 12 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of that 1 cent reduction will be in FY 2000-01.

REPEAL STATE FOOD TAX

($MILLIONS)

	STATE FISCAL YEAR				
	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$201.6
1 CENT	$89.6	$92.2	$95.0	$97.9	$1
REDUCE TO 1.0% (11/1/98)	($53.9)	($92.2)	($95.0)	($97.9)	($100.8)
REDUCE TO 0% (7/1/99) (2)		($86.3)	($95.0)	($97.9)	($100.8)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 100% in the first year due to a lag between the retail sale and the remittance.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic RB
APPROVED BY: Tom Covington

DATE: May 12, 1998

Attachment # 1

VISITOR REGISTRATION SHEET

Finance — May 12, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	Dept. of Revenue
Don Beason	the Capitol Group
Pat Sewell	DOR
Charles Collier	REVENUE
Anna Pope	Revenue
RV Owens	—
[illegible]	—
[illegible]	—
Danny Rogers	NC DOT
PAUL CLARK	ASHEVILLE CITIZEN-TIMES
Ann Case	NCRMA

VISITOR REGISTRATION SHEET

Finance — May 12, 1998

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Willie Riddick	DOR
John Rustin	NCFPC
Bill Scoggin	NCBA
Andy Romanet	NCCM.
John Colombo	AT&T

Attachment # 2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, May 12, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1092** Eliminate State Food Tax
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, MAY 19, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met May 19, 1998 with Senator Kerr presiding. There were 21 members of the committee present.

Senator John Kerr, Co-chairman of the Committee, called the meeting to order. He introduced the Pages, they were: Susan Gupton from Louisburg, North Carolina, sponsored by Senator Wellons and Iris Rowe from Maiden, North Carolina, sponsored by Senator Allran.

Senator Kerr called on Ms. Martha Walston, Staff Attorney, to give a presentation on the BAILEY DECISION (Attachment #1). In addition there was a handout titled "Benefit Increases Granted Since 1989 in the Teachers' and State Employees' Retirement System" (Attachment #2).

After questions and statements from Members of the Committee, the Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign Up Sheet is Attachment #3

(Attachment #1)

Explanation of State/Local Retiree Lawsuit -- Bailey
Revised May 14, 1998

TO: Senate Finance Committee
FROM: Legislative Staff
DATE: May 19, 1998

Ruling. On May 8, 1998, the North Carolina Supreme Court ruled against the State in the Bailey case. The background for and history of this case are set out below. The North Carolina Supreme Court's decision means that the State will have to reimburse taxpayers for State income taxes paid on their State, local, and federal pensions since 1989, and exempt these pensions in future tax years for those taxpayers whose pensions had vested as of August 12, 1989. A correction issued by the Court on May 14,1998, states that the refunds and the exemption apply to the entire pensions of those employees who were vested as of August 12, 1989, not just to the benefits attributable to service before August 12, 1989. The case applies only to State and local retirees but the same relief must be granted to federal retirees under the federal doctrine of intergovernmental tax immunities. The Court held that both protesters and nonprotesters are entitled to refunds.

The case now returns to the trial court to administer the refunds, determine attorneys fees, and resolve other matters. There are many unanswered questions. Staff of the Attorney General's Office, the Department of Revenue, and the General Assembly will continue researching the issues and provide answers as soon as possible.

Costs. The recurring cost of the exemption for State, local, and federal retirees could be a as much as **$128.6 million annually**.[1] In addition, there would be a one-time cost of refunds for tax years 1989-97 to all State, local, and federal who paid taxes on benefits attributable to pre-1989 service. The total cost of refunds plus interest is estimated at nearly **$1.06 billion (one-time)**. The Court affirmed the lower court's order that 15% of the refunds must be deducted from the refunds, to be used to pay attorneys fees and costs and expenses related to the litigation and the administration of the refunds.

---

[1] Because detailed data is not yet available, this estimate includes all benefits without regard to vesting date. The estimate may, therefore, include benefits being paid to retirees who had not vested in 1989 and thus are not eligible for the tax exclusion. For this reason, the actual cost may be lower. An estimated $45.5 million of the total estimated cost would be attributable to State and local retirees and $83.1 million to federal retirees. This recurring cost will grow but then will eventually phase out as 1989-vested retirees die.

It is not clear at this time whether these refunds must be made immediately or may be made in installments. The lower court opinion, affirmed by the Court, provided a complex mechanism combining tax credits and refunds. This mechanism may not be administrable as a practical matter. However the refunds are administered, the Department of Revenue will undoubtedly need additional funds for personnel and computer needs to carry out their duties in this matter.

30-Day Rule. The Court did not invalidate the 30-day rule completely, but appears to have held that if a taxpayer pays under protest and initiates litigation, all other similarly situated taxpayers benefit from the protest if the litigation succeeds. It is quite possible that this ruling would be applied to the intangibles tax nonprotesters who received no relief for the 1991-94 tax years and have appealed their case to the North Carolina Supreme Court. The cost of refunds to these nonprotesters, with interest, for the 1991-94 tax years would be approximately **$338.1 million (one-time)**. It seems less likely that it would be applied retroactively to the federal retiree nonprotesters who received some but not complete relief for the tax they paid on their retirement benefits for 1985-88.

Relief Unlikely. The State plans to ask the North Carolina Supreme Court for a re-hearing in order to reconsider its judgment. Because the opinion was unanimous regarding the refunds to protesters, it is unlikely to change. The court may agree to reconsider its ruling on the nonprotesters, however, or to reexamine other issues.

The State would probably have the right to ask the United States Supreme Court to review the case. Although the case was brought under federal constitutional provisions (prohibiting impairment of contracts and taking of property without just compensation), the State's defense was based on a State constitutional provision (prohibiting the State from contracting away its taxing power). Thus, because the basis for the rejection of the State's defense chiefly involves a State issue, rather than a federal issue, it may not be possible to have the case reviewed by the United States Supreme Court. If the State seeks review, we would probably not know whether review was granted until fall of 1998.

If it asks the United States Supreme Court to review the case, the State would probably also ask the North Carolina Supreme Court to stay (freeze) the judgment until the United States Supreme Court made a decision. It is not known whether a stay would be granted.

Background

In 1989, the United States Supreme Court ruled in Davis v. Michigan that the doctrine of intergovernmental tax immunity prohibits a state from taxing federal retirement income at a higher rate than State retirement income. Prior to 1989, North Carolina allowed a $3,000 income tax exclusion for federal and

military retirees and allowed a full income exclusion for State retirement income. To comply with the Davis decision, the General Assembly in 1989 allowed all government retirees, both State and federal, a $4,000 exclusion. The General Assembly increased the amount of retirement benefits paid to State retirees to help offset the impact of the tax on their retirement income. It also gave private retirees a $2,000 exclusion.

In 1990, State and local retirees sued North Carolina regarding the 1989 change of their tax exemption from a 100% exemption to an exemption for the first $4,000 in government retirement benefits received each year. This case is known as Bailey I. The plaintiffs claimed that the reduction of their retirement benefits was unconstitutional and sought refunds of taxes paid in 1989 and later years. Upon appeal from a trial court decision in favor of the plaintiffs, the North Carolina Supreme Court ruled that the plaintiffs were entitled to no relief because they had failed to comply with the 30-day protest rule; the United States Supreme Court declined to review the decision.

In 1992, Bailey II was filed as a class action on behalf of all State and local retirees who individually complied with the 30-day protest requirement for the 1989, 1990, and 1991 tax years. The plaintiffs' chief claim was that the taxation of State and local retirement income is a breach of contract and violates the federal constitutional prohibition against impairment of contracts. The State's response is that (1) the tax exemption for state and local pension income that existed prior to 1989 was not a contractual right and (2) the North Carolina Constitution does not allow the General Assembly to contract away its taxing authority.

In May 1995, the trial court ruled in favor of the plaintiffs, holding that taxation of retirement benefits earned and vested before August 12, 1989, is a breach of contract, violates the State and federal constitutional prohibitions against impairment of contracts, violates the State prohibition against retrospective tax laws, violates the federal due process clause, and, with regard to judges, retrospectively reduces their salaries in violation of the North Carolina Constitution. The court voided the 1989 act of the General Assembly that repealed the 100% tax exemption for State and local retirement benefits, as it applies to benefits earned and vested before August 12, 1989.

The State appealed the trial court decision and expedited the appeal to the North Carolina Supreme Court (bypassing the North Carolina Court of Appeals). The Court heard arguments in September 1996 but did not issue its opinion until May 1998.

BENEFIT INCREASES GRANTED SINCE 1989 IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

(Attachment #2)

Fiscal Year	Uses	Benefit
1989-90	* 3.5% COLA to retirees * Formula increase to 1.63% from 1.60% * 1.9% adjustment to retirees	$1,054.00
1990-91	* 6.1% Increase to retirees * Formula increase to 1.64% from 1.63% * .6% adjustment to retirees	$1,124.62
1992-93	* 1.6% COLA to retirees * Formula increase to 1.70% from 1.64% * 3.6% adjustment to retirees	$1,183.10
1993-94	* 1.6% COLA to retirees * Formula increase to 1.71% from 1.70% * 0.6% adjustment to retirees	$1,209.13
1994-95	* 3.5% COLA to retirees * Formula increase to 1.73% from 1.71% * 1.2% adjustment to retirees	$1,265.96
1995-96	* 2% COLA to retirees * Formula increase to 1.75% from 1.73% * 1.2% adjustment to retirees	$1,306.47
1996-97	* 4.4% COLA to retirees	$1,363.95
1997-98	* 4% COLA to retirees * Formula increase to 1.80% from 1.75% * 2.2% adjustment to retirees	$1,448.51
1998-99	* Equal to $79.4 million from General Fund	

The formula has increased a total of 12.5% from 1989 to 1998.
Retirees have received adjustments totaling 11.3% from 1989 to 1998.
Retirees have received COLA's totaling 26.7% from 1989 to 1998.
A retiree's benefit has increased a total of 44.8% from 1989 to 1998 due to compounding.

(Attachment #3)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/'98

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thad DAISE	NCAE
Harriet Dail	NCAE
Troy Green	SEANC
Laura DeVivo	DENR
David Simmons	ZDA, PA
Bernard Allen	SOS
Denny Rogers	NCDOT
Eric Hahs	Sen Rand's office
Paul Zigas	OSBM
Jim Roberts	C.U.C.A.
Michele Ors Call	Edgecombe Co. Schools

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gloria Bundy	Edgecombe Co – Princeville Montessori
Willie Riddick	DOR
Greg Gallant	UCP COG – Rocky Mount
Charles Barkley	San Antonio
Leanne Winner	NCSBA
Rob Schofield	NCJCDC
Nancy Mueller	LWV of Chapel Hill Area
Margaret Holton	LWV of Chapel Hill Area
Andy Romanet	N.C. League of Municipalities
Doug Miskew	IBM Corp.
Bill Stogner	NC Bar Assoc.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5/14/'98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCFTC
Jim Brown	N.C. State Ports
Jim Lofton	NCAFI
	NCCSSA
	NCHBA
	NCBA
Jennifer Knox	NCBA
Sabra Faires	Dept. of Revenue
JERRY JORDAN	ALAMANCE COUNTY AREA Chamber of Comm.
Randy D. Welch	Alamance County Chamber of Comm.
	Smith Anderson

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5/19/'98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Cook	Weyerhaeuser
Jamie Ramquist	NCHNA
Tom Manning	Advance Co. Chamber of Commerce
John Brodish	Zeb Alley P.A
Heather Jurl	OSA
B E Starling	NSAFPA
Evelyn Hawthorne	UNC-CH
Mary Carmichael	Mecklenburg County
R. ROGERS	DENR
Zeb Alley	ZPA PA

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 20, 1998

JOINT WITH HOUSE

9 A.M. - ROOM 544

RICK CARLISLE - SPEAKER
UPDATE ON BILL LEE ACT

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 20, 1998

9 AM - ROOM 544

JOINT WITH HOUSE

The Senate met jointly with the House Finance Committee on Wednesday, May 20, 1998, at 9 AM in Room 544. Rep. Gray presided and introduced Eric Neal, Page from Johnston County.

Rick Carlisle, Secretary of the Department of Commerce, was introduced and gave an overview of how the Bill Lee Act was working. At the conclusion of his presentation, he answered questions from the committee members. Secretary Carlisle also reported on the possibility of Federal Express coming to the Triad.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

(attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 27, 1998

12:00 NOON - ROOM 544 LOB

WELCOME - SENATOR HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

S. B. 1327 - No Tax on Gas Cities - Senator Dalton

S. B. 1229 - Abolish Inheritance Tax Waivers - Senator Kerr

S. B. 1230 - Motor Fuel Tax Changes - Senator Kerr

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 27, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met Wednesday, May 27, 1998 at 12:00 Noon in Room 544 LOB. There were 24 Members of the Committee present. Senator David W. Hoyle, Co-chairman of the Committee, called the meeting to order and introduced the Pages, they were: Gerry Cunningham and Robbie Hewett, both from Greensboro, North Carolina and sponsored by Senator Robert Shaw.

S.B. 1229 - Abolish Inheritance Tax Waivers:

Senator John Kerr, sponsor of the bill, came to explain the bill. After a period of discussion, Senator Tony Rand sent forth an amendment with a motion to change the date to July 1, 1998 that bill would become effective. There was a discussion of the amendment, after which the amendment was adopted. Senator Roy Cooper moved to give the bill a report of "favorable as amended", motion passed. (Copy of Bill, Explanation, Fiscal Note and Amendment are included in the Minutes).

S. B. 1230 - Motor Fuel Tax Changes:

Senator Kerr also explained this bill. There was a time of discussion and questions on the bill. Senator Robert Shaw sent forth an amendment to clarify the language in the bill. Senator Wib Gulley moved to give the bill a "favorable as amended, motion passed. (Copy of Bill, Explanation, Fiscal Note and Amendment are included in the Minutes).

S. B. 1327 - No Tax on Gas Cities:

Senator Walter Dalton came to explain the bill. He sent forth an amendment with an explanation of the amendment. After a time of discussion it was decided that the bill would be pulled from the Agenda and taken up again at a later date. (Copy of Bill, Explanation, Fiscal Note, Amendment to the Bill, Explanation of Amendment, Copy of Comments on behalf of Public Service Company of North Carolina, Inc., Copy of Position of North Carolina Natural Gas Corporation are included in the Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #2
Committee Report is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1229

Short Title: Abolish Inheritance Tax Waivers. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"**§ 105-2.1. ~~Internal Revenue Code definition.~~ Definitions.**

~~As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90.~~ The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Collector. -- Defined in G.S. 28A-1-1.

(3) Personal representative. -- Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

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

"**§ 105-13.1. Notices to Secretary of certain payments.**

(a) Life Insurance Policy. -- When a company pays the proceeds of a life insurance policy as a result of the death of an individual who owned the policy and was the named insured under the policy, the company must notify the Secretary of the payment on a form approved by the Secretary unless one of the following applies:

(1) The payment is to the surviving spouse.

(2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a), and the proceeds of the policy do not exceed one hundred thousand dollars ($100,000).

(b) Annuity and IRA. -- When a company pays the initial payment of an annuity or the initial distribution of an IRA as a result of the death of the annuitant or owner of the IRA, the company must notify the Secretary of the payment or distribution on a form approved by the Secretary unless one of the following applies:

(1) The payment or distribution is to the surviving spouse.

(2) The payment or distribution is to a Class A beneficiary, as described in G.S. 105-4(a), and the total amount to be paid under the annuity or distributed under the IRA does not exceed one hundred thousand dollars ($100,000)."

Section 6. G.S. 105-20 reads as rewritten:

"**§ 105-20. ~~Legacy charged upon real estate, heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver.~~ Taxes are a lien on real property in an estate.**

~~Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article.~~

The taxes imposed by this Article on the transfer of real or personal property are a lien on the real property in an estate and on the proceeds arising from the sale of real property. The lien is created at the date of death of the decedent and continues until the tax is paid, 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien is released when the Secretary issues a tax waiver for the lien, the Secretary issues an inheritance tax certificate, or the personal representative files

a tax certification with the clerk of superior court. A tax waiver may be filed in the office of the register of deeds of each county where the property is located. No formalities as to acknowledgment, probate, or approval by any officer are required as a condition to filing. The filing of a tax waiver is conclusive evidence that the real property described in the waiver is not subject to a lien for taxes imposed by this Article."

Section 7. G.S. 105-24 reads as rewritten:

"**§ 105-24. ~~Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.~~ Inventory of safe-deposit boxes.**

~~(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars ($2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.~~

(b) Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-deposit boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the opening of such ~~lock~~ safe-deposit box by the ~~executor, administrator,~~ personal ~~representative lessee~~ representative, collector, lessee, or cotenant of such deceased person, require the presence of the clerk of the superior

court of the county in which ~~such lock~~ the box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of ~~an officer or~~ a representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of ~~such lock~~ the box and to furnish a copy of such inventory ~~to the Secretary of Revenue,~~ to the ~~executor, administrator,~~ personal representative, collector, lessee, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of ~~such lock~~ the safe-deposit box; provided, that for ~~lock~~ boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the ~~lessee~~ personal representative, collector, lessee, or cotenant of the ~~lock~~ box ~~any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock box may be released except Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.~~ the contents of the box.

(c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly qualified personal representative of an estate~~ personal representative, collector, lessee, or cotenant believes upon reliable information that a ~~lock~~ safe-deposit box to which the decedent had access is empty, ~~the personal representative~~ that person may so certify to the clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this certificate, the clerk may authorize in writing the personal ~~representative or the personal representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~ box outside of the clerk's presence. The ~~personal representative or the personal representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer or~~ a representative of the institution having control or custody of the ~~lock~~ box, and ~~the personal representative or the personal representative's agent~~ shall certify to the clerk whether the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~ representative of the institution who was present at the time the ~~lock~~ box was opened and shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative was present. ~~If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue.~~ If the ~~lock~~ safe-deposit box is not empty, the ~~officer or~~ representative of the institution shall close the ~~lock~~ box at once and the ~~lock~~ box may be reopened only in accordance with subsection (b) of this section.

~~(d) Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or~~

~~savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.~~

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Section 8. G.S. 105-30 is repealed.

Section 9. G.S. 105-31 reads as rewritten:

"**§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.**

~~In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver.~~ Taxes payable under this Article are a debt that may be recovered in an action brought by the Secretary against the personal representative or against any other person having in hand any property with respect to which the taxes have been imposed."

Section 10. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. ~~105-24,~~ 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

Section 11. G.S. 41-2.1(f) reads as rewritten:

"(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24 relating to the administration of the inheritance laws or any other~~ provisions of the law relating to inheritance taxes."

Section 12. G.S. 41-2.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other~~ provisions of the law relating to inheritance taxes."

Section 13. G.S. 53-146.1(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the bank in its relationship with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 14. G.S. 53-146.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 15. G.S. 54-109.58(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the credit union in its relationship with ~~such~~ joint owners of ~~accounts as herein provided.~~ accounts."

Section 16. G.S. 54B-129(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of law relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the association in its relationships with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 17. G.S. 54B-130(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 18. G.S. 54C-165(b) reads as rewritten:

"(b) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other~~ law relating to estate taxes. This section ~~shall regulate, govern, and protect~~ regulates and protects the savings bank in its relationships with the joint owners of deposit accounts."

Section 19. G.S. 54C-166(d) reads as rewritten:

"(d) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other~~ law relating to estate taxes."

Section 20. This act becomes effective October 1, 1998, and applies to estates of decedents who die on or after that date.

EXPLANATION OF SENATE BILL 1229:
Abolish Inheritance Tax Waivers

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 25, 1998
SPONSOR: Senator Shaw of Guilford

Senate Bill 1229 is a recommendation of the Revenue Laws Study Committee.

Current Law

G.S. 105-24 currently requires that when a person dies, the Department of Revenue must be notified of any accounts, stocks, and bonds in the name of the decedent and of the contents in decedent's safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. Accounts held by the decedent and spouse with right of survivorship do not require a waiver before transfer.

Senate Bill 1229

The Bill deletes all language in G.S. 105-24 requiring the inheritance tax waivers, and repeals sections of the Inheritance Tax Article regarding penalties for failure to obtain waivers and forms required for the waivers. The Bill retains the requirement that the Secretary of Revenue must be notified of payments of proceeds of a life insurance policy when the payments are the result of the death of the individual who owned the policy and was the named insured under the policy. Notification is also required of the initial payment of an annuity or initial distribution of an IRA when the payment or distribution is the result of the death of the annuitant or owner of the IRA. However, notification is not required in the following instances:

1. When the payment or distribution is to a surviving spouse.
2. When the payment or distribution is to a class A beneficiary and the proceeds of the policy or the total amount paid under the annuity or distributed under the IRA do not exceed $100,000.

Senate Bill 1229 clarifies that inheritance taxes are a lien on real property in the decedent's estate and makes technical changes to the Inheritance Tax Article.

The Department of Revenue supports the abolishment of inheritance tax waivers, because the lien on the decedent's property is adequate security for payment of inheritance taxes. Also, most estates do not have to pay inheritance taxes. The abolishment of tax waivers also relieves the burden on the public to apply for and receive tax waivers when administering a decedent's estate. The Department feels that the tax waiver requirement creates a burden to the public that is much greater than any benefit derived.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1229

SHORT TITLE: Abolish Inheritance Tax Waivers

SPONSOR(S): Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	No expected General Fund impact				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Inheritance and Estate Tax Divisions of the Department of Revenue.

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: When a person dies, current law requires that the Department of Revenue be notified of any accounts, stocks, and bonds held in the name of the decedent. They must also be informed of the contents in the decedent's lock or safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. The bill deletes all language in G.S. 105-24 requiring inheritance tax waivers. The bill retains the requirement that the Secretary of Revenue be notified of payments from certain life insurance policies, annuities, and IRAs. Notification is not required if the payment or distribution is to a surviving spouse, or if a payment of less than $100,00 is made to a Class A beneficiary. This bill is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: No revenue impact is expected as a result of this proposal.

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Warren Plonk and Linda Struyk Millsaps LM
APPROVED BY: Tom Covington

DATE: May 26, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1229 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 7, line 10

( ) WHICH CHANGES THE TITLE

by deleting "October 1, 1998," and substituting "~~September~~ July 1, 1998,".

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1230

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, and Hoyle.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40.~~ the Secretary must refund the excess to the motor carrier."

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Antiknock Index Number. -- The arithmetic average of the American Society for Testing and Materials (ASTM) Research octane number (RON) and the ASTM Motor octane number (MON), that is (RON + MON)/2.

~~(1)~~ (1a) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. -- Defined in G.S. 105-228.90.

(6) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that ~~have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.~~ meet any of the following descriptions:

1. Have an Antiknock Index Number of less than 80,

2. Have an Antiknock Index Number of more than 100, contain more than 0.05 grams per gallon of lead, and have a 90 percent (90%) evaporation at a maximum of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86,

3. Have an Antiknock Index Number of more than 100, contain more than 2.8 weight percent oxygen, and have a 90 percent (90%) evaporation at a maximum temperature of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for

use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(19a) In-State-only supplier. -- Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(25) Person. -- Defined in G.S. 105-228.90.

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another

means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(30) Secretary. -- Defined in G.S. 105-228.90.

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange.~~ transaction.

b. A fuel alcohol provider.

(32) System transfer. -- Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

(33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.

(37) Transmix. -- Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.

(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party ~~exchange.~~ transaction. -- A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement or a sale whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.

(2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Diesel that is kerosene and is sold to an airport."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Liability. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty. The penalty is the amount of tax that would have been payable on the sale of the fuel if the distributor or importer had not claimed the sale as an exempt sale."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.105A. Monthly refunds for kerosene.

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene during the preceding month, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

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

(a) ~~Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Due Dates. -- The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
Upon Application	Last day of month after month in which tax was paid or the event occurred that is the basis of the refund.

(b) ~~Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

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

Section 11. G.S. 105-449.132 reads as rewritten:

"**§ 105-449.132. How to apply for a license.**

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene, report the results of the inventory to the Secretary of Revenue, and pay tax on the kerosene at the motor fuel rate:

(1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
(2) Distributors.
(3) Importers.
(4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. The change made in Section 1 of this act applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. The changes made in Sections 3, 5, 6, 8, 9, and 10 become effective July 1, 1998. The remaining sections of this act are effective when they become law.

EXPLANATION OF SENATE BILL 1230:
Motor Fuel Tax Changes

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 25, 1998
SPONSOR: Senators Kerr, Cochrane, Dalton, Hartsell, and Hoyle

---

Senate Bill 1230 is a recommendation of the Revenue Laws Study Committee, and exempts racing fuel from the per gallon excise tax on motor fuel, clarifies the taxation of kerosene, and makes other clarifying and conforming changes to the motor fuel tax laws.

Racing Fuel

Under current law the excise tax on racing fuel is refunded, because racing fuel is used for off highway purposes. The Bill exempts racing fuel from the motor fuels tax by exempting it from the definition of gasoline. The exemption for racing fuel includes any product that meets one of the following three descriptions:

- A product with an Antiknock Index Number of less than 80.
- A product with an Antiknock Index Number of more than 100, containing more than 0.05 grams per gallon of lead, and having a 90% evaporation at a maximum of 290 degrees Fahrenheit.
- A product with an Antiknock Index Number of more than 100, containing more than 2.8 weight percent oxygen, and having a 90% evaporation at a maximum temperature of 209 degrees Fahrenheit.

Senate Bill 1230 relieves the taxpayer of the burden of applying for a refund and the Department of Revenue from having to distribute the refund. The Bill also solves current inconsistencies among taxpayers who use racing fuel, and would result in the correct amount of tax being collected with less paper work. The proposed changes regarding racing fuel become effective July 1, 1998.

Kerosene

Senate Bill 1230 clarifies that kerosene is a form of diesel fuel by stating that the term diesel fuel includes kerosene. This is to conform to the Federal Government, who will begin taxing kerosene unless it is dyed effective July 1, 1998. The Bill adds diesel fuel that is kerosene and that is sold to an airport to the list of fuel exempt from the motor fuels tax. The Bill also adds a new section to the part of the motor fuels law dealing with refunds, so that a distributor will be allowed to obtain a refund on the sale of kerosene in the following instances:

(1) when the distributor sells kerosene to an end user and the distributor dispenses the kerosene into the end user's storage facility that contains fuel used only for heating, or (2) when the distributor sells kerosene to a retailer and the kerosene is dispensed into a storage facility marked for non-highway use and that has a dispensing device that is not suitable to fuel highway vehicles. These proposed changes become effective July 1, 1998.

Senate Bill 1230 provides that persons possessing kerosene as of July 1, 1998, that is not in the terminal transfer system, must inventory the kerosene, report the inventory to the Secretary, and pay tax on the kerosene. This provision applies to retailers who maintain storage facilities for kerosene of at least 2,000 gallons, distributors, importers, and suppliers. This is a transitional provision and is necessary, because kerosene will be taxed at the rack beginning July 1, 1998. This provision in the Bill is effective when it becomes law.

Other Changes to the Motor Fuel Tax Laws

Section 1 of the Bill provides for an automatic refund to a motor carrier whose credit exceeds his tax liability. A carrier operating in this State is taxed on the amount of motor fuel the carrier used in the State. The carrier is also entitled to a credit for tax paid by the carrier on any fuel purchased in the State. This section applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998.

Section 2 of the Bill is a conforming change requiring a carrier, who denies liability for a penalty, to pay the penalty under protest and then apply to the Department for a hearing. This section is effective when it becomes law.

Section 4 gives the Secretary of Revenue the authority to send a letter of release instead of returning a bond when a license holder files a bond or irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due. The Secretary already has this authority under G.S. 105-449.76, when a license is canceled. This section is effective when it becomes law.

Section 5 provides that if the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel was dispensed from a storage facility marked for non-highway use, then all fuel delivered to that storage facility is presumed to have been used for highway use and is taxable. This presumption currently applies to alternative fuels in G.S. 105-449.138(b). This section becomes effective July 1, 1998.

Section 7 imposes a penalty on a licensed distributor or licensed importer when they deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when filing a reconciling return showing the exempt sales. The penalty for failing to report is the amount of tax that would

have been payable if the distributor or importer had not claimed the sale as an exempt sale. This section is effective when it becomes law.

Section 9 amends G.S. 105-164.13, the statute that sets out exemptions and exclusions from the sales and use tax. This statute lists motor fuel as exempt from the sales and use tax unless a refund of the motor fuel tax is allowed. The proposal adds a distributor, who receives a motor fuel tax refund on kerosene sold, to those taxpayers who must pay sales tax on motor fuel.

Section 10 clarifies when applications for refunds of the motor fuel tax are due. This section becomes effective July 1, 1998.

Section 11 requires an applicant for a license as a provider of alternative fuel, a bulk-end user of alternative fuel, or a retailer of alternative fuel to meet the requirements for licensing set out in G.S. 105-449.69(b). This section is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1230 (First Edition)

SHORT TITLE: Motor Fuel Tax Changes

SPONSOR(S): Senators Kerr, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Highway Fund					
Racing Fuel	($8,154)	($8,154)	($8,154)	($8,154)	($8,154)
Kerosene Inventory	$1,271,100				
Motor Carrier Refunds	($240,000)	($240,000)	($240,000)	($240,000)	($240,000)
	$1,022,946	($248,154)	($248,154)	($248,154)	($248,154)
Highway Trust Fund	$423,700				
General Fund	$73,429	$73,429	$73,429	$73,429	$73,429
Local Funds	$36,714	$36,714	$36,714	$36,714	$36,714

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

EFFECTIVE DATE: The change made in section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. The changes made in sections 3,5,6,8,9, and 10 become effective July 1, 1998. The remaining sections are effective when the bill becomes law.

BILL SUMMARY: The bill exempts racing fuel from the motor fuels tax, provides automatic refunds of motor fuel taxes to motor carriers each quarter, clarifies the taxation of kerosene, and makes other changes in the motor fuel tax laws.

ASSUMPTIONS AND METHODOLOGY:

The following sections of SB 1230 have a fiscal impact:

Section 1

A motor carrier operating in North Carolina is taxed on the amount of motor fuel it uses in the state and is entitled to a credit for the motor fuels tax it paid on purchases made in the state. Under current law, a carrier has two years to request a refund when its tax credits exceed its tax liability. If the motor carrier fails to request a refund within two years of tax payment, then the Department of Revenue keeps the overpayment. From 1990 to 1996, the Department of Revenue earned $6 million or approximately $83,300 per quarter from lapsed refunds. Since the complete implementation of the International Fuel Tax Agreement (IFTA) in 1996, motor carriers have been more aggressive in seeking refunds owed to them. Based on a review of the second quarter of 1997, the amount of lapsed refunds was down to $60,000. **Under this bill, carriers would automatically receive refunds and the Highway Fund would no longer receive $240,000 in unanticipated revenues from lapsed refunds each year.**

Section 3

This section exempts racing fuel from the motor fuels tax and subjects the retail price of this fuel to the 6% state and local sales tax. Purchasers of racing fuel now receive a refund of the excise tax minus an administrative and inspection fee equal to 1.25 cents per gallon. Beginning in January 1998, sales tax was imposed on racing fuel based on the average wholesale price of regular motor fuel for the prior 12 months. Based on data supplied by the Department of Revenue, 652,347 gallons of racing fuel were purchased in the North Carolina in 1996. Assuming 1996 racing fuel purchases as the standard, the fiscal impact of this tax change is as follows:

Highway Fund = By exempting racing fuel, **the Highway Fund would lose $8,154 from the administrative and inspection fee.** (652,347 gallons X $.0125)

General Fund = Racing fuel is now subject to the average wholesale price of regular motor fuel. This price was 68.59 cents per gallon in 1997. The average retail price of racing fuel is $3.50 per gallon. This bill will tax motor fuel at the actual retail price as shown in the example below.

652,347 gallons X $3.50	= $136,993	Retail price
652,347 gallons X $ .6859	= $ 26,850	Wholesale price
Net Change	$110,143	

The General Fund would receive $73,429 of this increase and local governments would receive $36,714.

Section 7

This section imposes a new penalty on licensed distributors or licensed importers who deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when

filing a reconciling return. **The Department anticipates a revenue gain from this penalty, but cannot estimate the amount.**

Section 12

As of July 1,1998, any kerosene in the inventory of retailers, suppliers, distributors, and importers will be taxed at the motor fuel rate. When a similar inventory was taken in 1995, there were 7.6 million gallons of kerosene reported to the Department of Revenue. Assuming the 1998 inventory will mirror 1995, then 7.6 million gallons of kerosene will be taxed at 22.3 cents per gallon to yield a **one-time revenue gain of $1,694,800. This gain will be divided 75% to the Highway Fund ($1,271,100) and 25% to the Highway Trust Fund ($423,700).**

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 24, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1230 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) R. Shaw
Sen.)

moves to amend the bill on page 3, line 21

( ) WHICH CHANGES THE TITLE

by inserting after the word "products" the following phrase "used as racing fuel".

SIGNED Bob Shaw

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE DRS8781-RBX34(5.15)

FILED - SENATE
S 1327
MAY 21 1998
PRINCIPAL CLERK

Short Title: No Tax on Gas Cities. (Public)

Sponsors: Senators Dalton and Phillips.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, AND TO LIMIT THE SERVICE AREA A MUNICIPALITY MAY SERVE WITH PIPED NATURAL GAS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 5E.

"Piped Natural Gas Tax.

"§ 105-187.40. Definitions.

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(4) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.027
Over 15,001	.022

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"**§ 105-187.42. Liability for the tax.**

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"**§ 105-187.43. Payment of the tax.**

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"**§ 105-187.44. Distribution of part of tax proceeds to cities.**

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

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

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

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

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

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

(2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.

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

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

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

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

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

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company, a natural gas company, or a regional natural gas district,~~ company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

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

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

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

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

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

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

~~(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.~~"

Section 3. G.S. 105-116.1 reads as rewritten:

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

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district,~~

company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

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

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional natural gas district,~~ company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(c)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased

or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales

to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all

accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or

cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas,~~ electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market'

means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5D of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"§ 105-164.20. Cash or accrual basis of reporting.

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report ~~such~~ sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such~~ the basis ~~of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall~~ selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal

property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other

purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~"

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

(1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.

(2) One-half of the amount of tax payable during the taxable year under Article 5D of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 ~~or~~ and G.S. 105-187.38 or under former ~~distribution under~~ G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5D of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5D of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Section 14. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.2A. Piped gas service area outside of municipalities.**

(a) Service Area. -- A municipality that operates a piped natural gas distribution system has the right to serve all premises being served by it on June 30, 1998, and all premises initially requiring piped natural gas service after June 30, 1998, that are located wholly within the county where the municipality is located. A municipality

may not serve any premises that are outside the service area authorized by this subsection.

(b) Definition. -- As used in this section, the term "premises" has the same meaning as in G.S. 62-110.2. When applying the definition of premises to this section, "electric service" is considered as piped natural gas service."

Section 15. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 16. Sections 1 through 12 of this act become effective January 1, 1999. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1327:
No Tax on Gas Cities

TO: Senate Finance
FROM: Cindy Avrette, Committee Counsel
DATE: May 26, 1998
SPONSOR: Senator Walter Dalton and Senator Jim Phillips

Senate Bill 1327 preserves the tax-exempt status for piped natural gas sold by one of the eight municipalities that operate their own piped gas system. It also makes the taxes on other sales of piped natural gas more uniform and it limits the service area a gas city may serve with piped natural gas.

There are three types of sellers of piped natural gas: a utility company, a gas marketer, and a gas city. A utility company is a utility regulated by the Utilities Commission. A gas marketer is a person who sells piped natural gas but is not a regulated utility. Gas marketers use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service. Piped natural gas is increasingly sold by persons who are not utilities. A gas city is a city that operates its own piped gas system. Eight cities in the State do this and have since at least the 1950's. The eight gas cities are: Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Two taxes now apply to piped natural gas. The applicability and rate of the taxes varies depending upon both the identity of the seller and the identity of the consumer. One of these taxes is a gross receipts tax equal to 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The franchise tax applies only to the receipts of a regulated utility. The franchise tax on piped natural gas was enacted around 1925, when only regulated utilities could sell piped natural gas. Federal and state regulation of the piped natural gas industry has changed and now these regulations allow persons who are not utilities to sell piped natural gas. Therefore, gas marketers and gas cities, because they are not regulated utilities, are not subject to the franchise tax, except to the extent it is imposed on the transportation charges or embedded in the price paid on gas bought from a utility for resale to customers.

The second of these two taxes is the sales tax on piped gas. This tax is the result of a change made by the General Assembly in 1985. That year, the existing 6% utility franchise tax was split into a 3% sales tax and a 3.22% gross receipts tax to make the sales tax portion deductible by individuals on their federal income tax returns. Although the federal tax law changes in 1986 removed this deduction, North Carolina did not change its taxation of utilities.

For several years, the Department did not impose the general 4% State and 2% local sales and use tax rate to the sale of piped natural gas. However, under a directive recently issued by the Department of Revenue, the Department clarified that piped natural gas is tangible personal property as that term is defined in the sales and use tax statutes. Therefore, the retail sale of piped natural gas is subject to sales and use tax unless specifically exempted by statute.

The sale of piped gas by a gas city or by a gas marketer is not exempt from sales and use tax. Therefore, the retail sale of piped gas by these sellers is subject to a 6% State and local sales and use tax unless a lower rate applies. The law provides a lower rate of 3% for all sales made by regulated utilities and a lower rate of 2.83% for sales made to farmers, manufacturers, and laundries. Piped natural gas taxes at the State rate of 3% or 2.83% are not subject to the 2% local sales and use tax. If piped natural gas is purchased from a seller who is not required to collect North Carolina sales tax, then the purchaser is subject to a use tax on the purchase.

Prior to the Department's sales tax directive, the sales and use tax was not imposed on the sale of piped natural gas sold by gas cities and gas marketers. The changes made by the directive become effective July 1, 1998. This bill preserves the tax-exempt status for piped natural gas sold by gas cities. It also limits the area a gas city may serve to the area being served by it on June 30, 1998, and areas initially requiring piped natural gas service after that date if the area is located wholly within the county in which the gas city is located.

To correct the other inequities embedded in the bifurcated taxation of piped natural gas, the bill eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State. The uniform tax is an excise tax on the gas. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. A tax rate based upon the amount of gas consumed, versus the price paid for gas and the gross receipts derived from gas, should result in a more stable revenue stream. The price of gas varies from season to season and year to year.

A declining block tax rate is also used to preserve the current distribution of the tax burden between the three classes of piped gas customers. These three classes are residential, business, and industrial. The current taxes are a percentage of price. The rates for the three classes are also based on price; residential rates are the highest, business rates are in the middle, and industrial rates are the lowest. The current combination of rate and tax therefore results in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers.

DRAFT

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL SIMULATION

BILL NUMBER: S.B. 1327

SHORT TITLE: No Tax on Gas Cities

SPONSOR(S): Senators Dalton and Phillips

FISCAL IMPACT

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

(Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Model 1: No Use Tax Collections from Customers of Gas Marketers					
REVENUES					
State	(8.2)	(8.4)	(8.5)	(8.7)	(8.9)
Counties	(1.6)	(1.6)	(1.7)	(1.7)	(1.7)
Model 2: 25% Use Tax Collections from Customers of Gas Marketers					
REVENUES					
State	(6.8)	(6.9)	(7.1)	(7.2)	(7.4)
Counties	(1.2)	(1.2)	(1.2)	(1.3)	(1.3)
Model 3: 50% Use Tax Collections from Customers of Gas Marketers					
REVENUES					
State	(5.4)	(5.5)	(5.6)	(5.7)	(5.8)
Counties	(0.8)	(0.8)	(0.8)	(0.8)	(0.9)
Model 4: 75% Use Tax Collections from Customers of Gas Marketers					
REVENUES					
State	(4.1)	(4.2)	(4.3)	(4.4)	(4.4)
Counties	(0.4)	(0.4)	(0.4)	(0.4)	(0.4)

EXPENDITURES

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Counties, and Municipalities

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY: In the natural gas industry there are three types of sellers: utility companies, gas marketers, and cities that sell their own gas. Several types of taxes are now applied to piped natural gas, with the rates and type of tax charged determined by the type of seller and buyer. Utility companies are responsible for a sales tax of 3% (2.83% if the customer is a manufacturer) and a gross receipts tax of 3.22% on the commodity price. Under current law they are the only group responsible for sales tax. Gas marketers are responsible for a gross receipts tax on the transportation charge (not the commodity price). However, if the gas is sold to a customer with direct access, no gross receipts tax is payable. Gas cities pay no sales tax and pay a gross receipts tax only on the gas they purchase from a North Carolina utility for resale to their customers. A use tax should be paid by the customers of out of state gas marketers. All taxes are based on the price paid for the gas.

On May 5, 1998, the Department of Revenue issues a directive concerning the sale of piped natural gas. Under this directive piped natural gas is defined as tangible personal property, and its retail sale is subject to the 4% state and 2% sales and use tax, unless specifically exempt by statute. Sales of piped natural gas by the producer of the gas will continue to be exempt from the sales tax on piped gases because of a sales tax exemption that applies to sales of "products of forests and mines in their original or unmanufactured state" when the sales are made by the "producer in the capacity of producer." However, the sale of piped gas by a city or by a gas marketer is not exempt from sales and use tax, and would be subject to the 6% rate unless the city is a utility or the gas is sold to a farmer, manufacturer, or laundry. Utilities will only be responsible for a 3% sales tax rate, or 2.83% if the gas is sold to farmers, manufacturers, or laundries. The Department of Revenue directive becomes effective July 1, 1998.

This bill would restructure the taxes on natural gas. The bill eliminates the distinction between sales by utilities and sales by others, and applies a uniform tax to all piped natural gas consumed in North Carolina. The uniform tax is an excise tax. The rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. The tax rate will be based on the amount of gas consumed, rather than the price paid for the gas. The bill would also exempt the gas cities from the new tax.

ASSUMPTIONS AND METHODOLOGY: Actual sales and gross receipts tax collections (related to piped natural gas) in 1997 were estimated to be $58.4 million by the Public Staff of the Utilities Commission. This number was then increased to reflect the 2% growth rate used in the economic model. An adjustment was made to convert the calendar year numbers to the fiscal year basis. An additional $2.7 million was added to the revenue estimate to reflect the expected sales tax income from taxing the gas cities, per the May 1998 Department of Revenue directive. An additional $7.1 million was included as the estimated additional tax income from taxing gas marketers at 6% (2.83% if the customer is a manufacturer), per the May 1998 Department directive. Approximately 1.6 million of the revenue from taxing gas marketers would be forwarded to the counties as local sales tax. In total, this created a 1998-9 revenue estimate from piped natural gas, under the current system and including the Department of Revenue directive, of $69.9 million. Future years were forecasted based on a 2% growth rate.

Estimates for tax income under the bill were based on actual volumes delivered in 1997. The 1997 deliveries were grouped into "rate blocks" and increased to reflect the 2% growth rate used in the economic model. An adjustment was made to convert the calendar year numbers to a fiscal year basis. Future years were forecasted based on a 2% growth rate.

The simulation is provide as a mechanism to account for use taxes already collected by the Department of Revenue from the customers of natural gas marketers.

TECHNICAL CONSIDERATIONS: The estimated revenue associated with the May 5, 1998, Department of Revenue directive was included in the baseline estimate of potential revenue without the bill. It should also be noted that natural gas prices are highly violable and are very sensitive to changes in climate and market forces. As such, year to year variations in the revenue associated with natural gas taxes, under the current system, could vary dramatically.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: May 26, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-2

Date_____,1998

Comm. Sub. []
Amends Title []

Senator_____

moves to amend the bill on page 2, lines 15 through 17, by rewriting those lines to read:

"First 200	$.0470
201 to 15,000	.0270
Over 15,001	.0224";

and on page 3, lines 39 and 40, by striking through those lines;

and on page 14, line 41 through page 15, line 5, by rewriting those lines to read:

"(a) Service Area. -- A gas city that operates a piped natural gas distribution system has the right to serve all premises being served by it on June 30, 1998. Subject to the limitations set forth in G.S. 159-96 and G.S. 160A-312, a gas city may also serve premises initially requiring piped natural gas service after June 30, 1998, if the premises are located wholly within the county or counties in which the gas city operated a piped natural gas distribution system on June 30, 1998. A gas city may not serve any premises that are outside the service area authorized by this subsection.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-2 Page 2 of __

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

(1) Gas city. -- Defined in G.S. 105-187.40.

(2) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this section, "electric service" is considered as piped natural gas."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF AMENDMENT:
S1327-ARBX-2

This amendment does three things:

- Changes the third rate category on page 2, line 17, to provide the State with the same amount of revenue under the bill that it anticipates receiving under the current franchise/sales tax structure. The targeted amount of revenue needed is $60 million. This amount is based on the law prior to the directive issued by the Department of Revenue.

- Makes a technical change on page 3, lines 39 and 40. These lines are no longer needed because regional natural gas districts will not pay a franchise tax under the bill.

- Modifies the service area in which a gas city may operate. It expands the area to include premises located in a county in which the gas city currently operates, as opposed to limiting it to premises located in the gas city's home county. It also clarifies that the expansion of a gas city's service area is limited by the requirements of G.S. 159-96 and G.S. 160A-312.

  G.S. 159-96 says that a city may not use revenue bonds to finance, in whole or in part, a natural gas distribution system that will serve users outside the corporate limits of the city if service is available or will be available within a reasonable time from a local distribution company.

  G.S. 160A-312 gives cities the authority to operate public utilities within their corporate limits and, within reasonable limitations, outside their corporate limits. Caselaw provides that certain factors may be considered when determining whether an extension of service is reasonable. As applied to electricity, those factors include the electric providers' current levels of service in the area in question, particularly in the immediate vicinity of the potential customer, and the present readiness, willingness, and ability of each to serve the potential customer.

COMMENTS BEFORE

THE SENATE FINANCE COMMITTEE

ON SENATE BILL 1327--NO TAX ON GAS CITIES

MAY 27, 1998

RESPECTFULLY SUBMITTED BY BILL McAULAY

ON BEHALF OF PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.

Thank you for the opportunity to speak before you today about two concerns that Public Service Company has with this bill. First, this bill creates a new, distinctly unlevel playing field. If the eight municipalities that are in the natural gas business are exempted from this tax, they will receive a distinct competitive advantage in recruiting new industry. This competitive advantage will exist over not only the natural gas local distribution companies of the state, but also over the state's other municipalities. In other words, if I were a large gas-using industry locating in North Carolina, I would have a strong economic incentive to locate my new plant in one of these eight municipalities where natural gas is not subject to the tax, as opposed to other cities in the state where natural gas is taxed. Prior to the recent directive issued by the Department of Revenue, this industry would not have paid the tax no matter where in the state they located. Now, to avoid the tax, they need only to locate in one of these eight cities.

Our second concern is with regard to the section entitled "piped gas service area outside of municipalities" on pages 14 and 15 of the bill. This should be revised to ensure that there are no conflicts or inconsistencies with current law, so that the intent of the proposed legislation is clear.

In a more general sense, it's our opinion that this bill in total is too much, too fast. The issue of taxes on natural gas was discussed and debated at length last year with no consensus

close to being reached. The directive that was recently issued changed the current law's interpretation, and it has a far-reaching effect--in addition to causing the municipalities that this bill would exempt to now pay the tax, it also causes many of the state's largest industries to pay the tax. A change of the current law's interpretation with this significant impact should not be hastily made. For this reason, we think the best course of action at this time would be to return to the status quo that existed before this directive was issued, so that this issue could receive in-depth and comprehensive study.

In closing, let me reiterate that we oppose legislative action that would create a competitive advantage for one at the disadvantage of another. We feel this bill needs to be studied in a much broader context, and we'll be happy to work with this committee and any interested party on this issue. Thank you.

POSITION STATEMENT
OF
NORTH CAROLINA NATURAL GAS CORPORATION
SENATE BILL 1327
NO TAX ON GAS CITIES

North Carolina Natural Gas Corporation favors that part of this bill contained on page 2, lines 4-31, excluding lines 18-20, which helps to equalize taxes that are collected by sellers of gas and paid by all users of gas. This helps to level the playing field among all customers and sellers of natural gas. However, NCNG would like to see the per therm charge for those volumes in excess of 15,001 at a rate of $ .011 per therm which would more closely mirror the rates charged by surrounding states and not set North Carolina at an economic disadvantage for keeping and attracting new industry.

- **NCNG objects to some provisions of this bill as follows:**

- On page 14, lines 40-44, include a proposal to expand the service area of eight municipalities that currently serve natural gas to their citizens to include "all premises initially requiring piped natural gas service after June 30, 1998, that are located wholly within the county where the municipality is located." North Carolina Natural Gas presently serves many customers in large portions of the counties in which four of the municipalities are located and this language would, in effect, confiscate parts of our franchised territory. NCNG recommends that lines 40-44 on page 14 and lines 1 & 2 on page 15 be stricken from this bill.

- NCNG is regulated by the North Carolina Utilities Commission and is required to be a supplier of last resort and has an obligation to serve. This language could render NCNG's investment in these areas valueless and this loss would have to be made up by NCNG's remaining customers.

- Residents outside of a municipality do not have any vote in municipal elections and their rates would be established by the municipality, which could be very detrimental to those county residents as it is common in this state for municipals to charge out-of-town residents twice the in-town rate for water service they are receiving.

- NCNG's customers, who have disputes or disagreements with NCNG, have the right to bring their disagreements before the North Carolina Utilities Commission for resolution. Customers of municipalities do not have this protection.

- NCNG also recommends that lines 18-20 on page 2 be eliminated from this bill. NCNG cannot understand why eight cities think they should not collect the excise tax on the piped natural gas sold and transported by them when all of the other citizens, businesses, and industries in cities such as Goldsboro, Gastonia, Wilmington, Lumberton, Kenansville, New Bern, Fayetteville, Hickory, and Whiteville, to name a few, would be required to pay the excise tax. This would give these eight cities a competitive advantage in recruiting new industry over all areas of the state. Either all consumers of gas in the state should pay the tax or not pay the tax. It is a fairness issue.

- If these eight cities collect the excise tax, they would receive half of it back on a quarterly basis as described in lines 10-14 on page 3, just like the other cities in the state are to receive.

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/27/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	N.C. Natural Gas
Doc Freeman	City of Shelby
Andy Romont	N.C.L.M.
Jennifer Knox	NCBA
Kevin Howell	NCBA
David Simmons	ZDA, PA
John McAlister	Duke Energy
[signature]	CP&L
Alice Garland	Electric Cities
Joyce Peters	JP Assoc/Elect.
Cam Cowan	BPMHL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/27/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Essex	Poyner & Spruill Raleigh
Sandy Sands	WCSR
Nancy Bradley	NCCBS
Donny Rogers	NCDOT
Gray Styers	Kilpatrick Stockton LLP – Raleigh
William R. Edmonds	NCUC
Sam Kirby	NCUC
Charles Hamb	DOR
Donna Alderman	DOR
Nancy Pomeranz	DOR
Jay Hall	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/27/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lennie Collins	DOR
Andrew Sbal	DOR
Patti Seawell	"
Charles Collins	"
Butch Dunnells	NCSDA
Sharon Miller	C.U.C.A.
Jerry Roberts	C.U.C.A.
Bill Smith	Ernst & Young
AW Turner	Public Staff NCUC
Jim Hoard	Public Staff - NCUC
Sabra Faires	Dept. of Revenue

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/27/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Pennacchia	Piedmont Natural Gas Co.
Don Hannan	"
Charles Francis	Woods & Francis, PLLC
Bill McAulay	PSNC

(attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, May 27, 1998

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

FAVORABLE, AS AMENDED

S.B. **1229** Abolish Inheritance Tax Waivers
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1230** Motor Fuel Tax Changes
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 1229 and SB 1230

(Attachment #1)

)

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 2, 1998

ROOM 544 - 12:00 NOON

WELCOME - SENATOR HOYLE PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- **S. B. 1327 - NO TAX ON GAS CITIES - SEN. DALTON**
- **S. B. 1199 - PHARMACY BD. REFUND FEES - SEN. KERR**
- **S. B. 1200 - PHARMACY PERSONNEL - SEN. KERR**

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 2, 1998

12:00 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, June 2, 1998 at 12:00 Noon in Room 544 of the Legislative Office Building. There were 22 members of the committee present. Senator David W. Hoyle, Co-chairman of the Committee, called the meeting to order and introduced the Pages they were: Cameron Smith from Gastonia, North Carolina and Kelly Schaffer and Erin Boggs both from Dallas, North Carolina. They are all sponsored by Senator Hoyle.

S. B. 1199 - Pharmacy Bd. Refund Fees:

Senator Kerr stated that this bill has been taken care of by the Pharmacy Bill. (Copy of Bill, Explanation and Fiscal Note are included in Minutes)

S. B. 1200 - Pharmacy Personnel:

Senator Kerr explain the bill. Mr. Alan Miles, Legal Counsel to the Pharmacy Board, spoke on the bill. Mr. Jack Watts, President of the Board of Pharmacy, spoke in support of the bill. Mr. Virgil McBride on behalf of the Pharmacy Association stated that they support the bill. After a time of discussion and questions from members of the committee, Senator Kerr moved to give the bill a "favorable" report, motion passed. (Copy of Bill, Explanation and Fiscal Note are included in the Minutes).

S. B. 1327 - No Tax on Gas Cities:

Senator Dalton came to explain the bill. He sent forward an amendment to the bill and explained the amendment. Senator Hoyle explained the committee that the amendment would be voted on today, but that the bill would be voted on later as amended. Mr. Glenn Jernigan representing the N. C. Natural Gas Company, stated that they support the amendment. Mr. Jerry Roberts, Carolina Utility Association, stated that they would have to look at the amendment. Senator Hoyle explained that Mr. Roberts represents a group in the industry not the natural gas companies. Senator Dalton moved for adoption of the amendment, motion passed. Senator Dalton began to explain the bill as amended. Senator Hoyle called on Ms. Sabre Faires from the Department of Revenue to come and speak on the directive that was issued by the Department on this issue, which she did. Mr. Dennis Roberts from Lexington, North Carolina came to speak of his support of this bill. Bill was held for discussion at a later date. (Copy of Bill, Amendment, Explanation of Amendment are included in Minutes)

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In is Attachment # 2
Committee Report is Attachment # 3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1199*

Short Title: Pharmacy Bd./Refund Fees. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DIRECT THE BOARD OF PHARMACY TO REFUND FEES ERRONEOUSLY COLLECTED.

Whereas, the Board of Pharmacy charged persons it deemed to be "pharmacy technicians" a registration fee based on an erroneous interpretation of Chapter 231 of the 1997 Session Laws; and

Whereas, the Board of Pharmacy defined the term "pharmacy technician" without proper statutory authority; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Board of Pharmacy shall develop a plan, including a timetable, for the repayment of fees erroneously collected.

Section 2. The Board of Pharmacy shall submit the plan in writing to the Joint Legislative Administrative Procedure Oversight Committee no later than September 1, 1998.

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

EXPLANATION OF SENATES BILL 1199 & 1200:
Pharmacy Bd./Refund Fees
Pharmacy Personnel

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 2, 1998
SPONSOR: Senator Kerr

The Joint Legislative Administrative Procedure Oversight Committee recommended **Senate Bills 1199 and 1200** to the 1998 General Assembly. Senate Bill 1199 requires the Board of Pharmacy to develop a plan to refund a $25 registration fee it imposed on persons it deemed to be "pharmacy technicians" based on an erroneous interpretation of S.L. 1997-231. The Board must submit the plan to the Joint Legislative Administrative Procedure Oversight Committee by September 1, 1998. The Board mailed the refund checks last Thursday and Friday, May 28 and 29. Therefore, there is no need to act on Senate Bill 1199. Senate Bill 1200 amends the Pharmacy Practice Act to accomplish what the Board intended to accomplish in S.L. 1997-239. It defines "pharmacy technicians" and authorizes the Board of Pharmacy to register pharmacy technicians and impose a $25 registration fee on them.

Last session, the General Assembly authorized the Board of Pharmacy to charge and collect "*for the registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00).*" Based upon that legislation, the Board, through its rule-making power, defined the term "pharmacy technician", required pharmacy technicians to be registered with the Board, and charged pharmacy technicians an annual $25.00 registration fee.

After studying the Pharmacy Practice Act, the Joint Legislative Administrative Procedure Oversight Committee found that the Board did not have the statutory authority to adopt administrative rules defining or registering pharmacy technicians and that it did not have the statutory authority to charge pharmacy technicians an annual $25 registration fee. G.S. 90-85.21(a), the statute upon which the Board relied when it developed its rules, requires each pharmacy to identify the pharmacist-manager and all pharmacist personnel. The Act defines the terms "pharmacist" as a person licensed to practice pharmacy. The Act does not define "pharmacist personnel".

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1199 (First Edition)

SHORT TITLE: Pharmacy Board / Refund Fees

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	(see ASSUMPTIONS AND METHODOLOGY)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Pharmacy

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

BILL SUMMARY: The bill directs the Board of Pharmacy to develop a plan to repay fees erroneously collected from pharmacy technicians. The Board will present the plan to the Joint Legislative Administrative Procedure Oversight Committee no later than September 1, 1998.

ASSUMPTIONS AND METHODOLOGY: On May 28 and 29, 1998, the Board of Pharmacy mailed out refund checks to unlicensed pharmacy personnel that were erroneously registered in 1997. On May 28, $68,275 in refund checks were mailed to 2,731 individuals and on May 29, $38,225 in refunds were mailed to 12 companies. At $25 per registration, the total amount refunded by the Board was $106,500 for 4,260 pharmacy personnel. The Board can report to the Joint Legislative Administrative Procedure Oversight Committee by September 1, 1998 that it has completed the task and that no repayment plan is needed.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1200*

Short Title: Pharmacy Personnel. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DEFINE PHARMACY PERSONNEL, PHARMACY TECHNICIANS, AND ALLOW THE BOARD OF PHARMACY TO REGISTER PHARMACY TECHNICIANS AND CHARGE A FEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.3 is amended by adding two new subsections to read:

"(q1) 'Pharmacy personnel' means pharmacists and pharmacy technicians.

(q2) 'Pharmacy technician' means unlicensed persons who spend the majority of their time dispensing as aides to and under the supervision of a pharmacist and are registered with the Board in accordance with G.S. 90-85.15A."

Section 2. Article 4A of Chapter 90 is amended by adding a new section to read:

"**§ 90-85.15A. Pharmacy technicans; registration.**

Pharmacy technicians shall register annually with the Board in accordance with rules adopted by the Board pursuant to Chapter 150B of the General Statutes. Pharmacy technicians shall also pay the registration fee in accordance with G.S. 90-85.24."

Section 3. G.S. 90-85.21(a) reads as rewritten:

"**§ 90-85.21. Pharmacy permit.**

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application

shall identify the pharmacist-manager of the pharmacy and all ~~pharmacist~~ pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in ~~pharmacist~~ pharmacy personnel within 30 days of such change."

Section 4. G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, one hundred sixty dollars ($160.00) plus the cost of the test material; for renewing the license as a pharmacist, one hundred ten dollars ($110.00); for renewing the license of an assistant pharmacist, ten dollars ($10.00); for licenses without examination as provided in G.S. 90-85.20, original, four hundred dollars ($400.00); for original registration of a pharmacy, three hundred fifty dollars ($350.00), and renewal thereof, one hundred seventy-five dollars ($175.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), fifty dollars ($50.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, fifty dollars ($50.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, fifty dollars ($50.00); for the annual registration of pharmacy technicians, twenty-five dollars ($25.00); ~~for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00);~~ for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00); for registration to dispense devices, deliver medical equipment, or both, three hundred dollars ($300.00) per year. All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of ~~pharmacists~~ pharmacy personnel, or before any license or permit, or any renewal thereof, may be issued by the Board."

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

EXPLANATION OF SENATES BILL 1199 & 1200:
Pharmacy Bd./Refund Fees
Pharmacy Personnel

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 2, 1998
SPONSOR: Senator Kerr

The Joint Legislative Administrative Procedure Oversight Committee recommended **Senate Bills 1199 and 1200** to the 1998 General Assembly. Senate Bill 1199 requires the Board of Pharmacy to develop a plan to refund a $25 registration fee it imposed on persons it deemed to be "pharmacy technicians" based on an erroneous interpretation of S.L. 1997-231. The Board must submit the plan to the Joint Legislative Administrative Procedure Oversight Committee by September 1, 1998. The Board mailed the refund checks last Thursday and Friday, May 28 and 29. Therefore, there is no need to act on Senate Bill 1199. Senate Bill 1200 amends the Pharmacy Practice Act to accomplish what the Board intended to accomplish in S.L. 1997-239. It defines "pharmacy technicians" and authorizes the Board of Pharmacy to register pharmacy technicians and impose a $25 registration fee on them.

Last session, the General Assembly authorized the Board of Pharmacy to charge and collect "*for the registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00).*" Based upon that legislation, the Board, through its rule-making power, defined the term "pharmacy technician", required pharmacy technicians to be registered with the Board, and charged pharmacy technicians an annual $25.00 registration fee.

After studying the Pharmacy Practice Act, the Joint Legislative Administrative Procedure Oversight Committee found that the Board did not have the statutory authority to adopt administrative rules defining or registering pharmacy technicians and that it did not have the statutory authority to charge pharmacy technicians an annual $25 registration fee. G.S. 90-85.21(a), the statute upon which the Board relied when it developed its rules, requires each pharmacy to identify the pharmacist-manager and all pharmacist personnel. The Act defines the terms "pharmacist" as a person licensed to practice pharmacy. The Act does not define "pharmacist personnel".

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1200 (First Edition)

SHORT TITLE: Pharmacy Personnel

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Pharmacy Operating Acct.	$106,500	$106,500	$106,500	$106,500	$106,500
EXPENDITURES	To be determined by Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Pharmacy

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

BILL SUMMARY: The act defines pharmacy personnel and pharmacy technicians. The act also allows the Board of Pharmacy to register pharmacy technicians and a charge them a $25 fee.

ASSUMPTIONS AND METHODOLOGY:
In 1997 and 1998, the Board of Pharmacy collected $106,500 in fees by registering 4,260 unlicensed pharmacy personnel. The Joint Legislative Administrative Procedure Oversight Committee reviewed the $25 fee on pharmacy technicians and found that the Board of Pharmacy had no statutory authority to charge the fee. The fees were refunded on May 28 and 29, 1998. This bill gives the Board of Pharmacy the statutory authority to charge a $25 registration fee for pharmacy technicians. The note assumes the same 4,260 personnel licensed in 1997 and 1998 will be licensed again in FY 1998-99. Since no estimate is available on the growth rate in this profession, the revenue for future years is equal to FY 1998-99.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

FILED - SENATE
S 1327 MAY 21 1998
PRINCIPAL CLERK

SENATE DRS8781-RBX34(5.15)

Short Title: No Tax on Gas Cities. (Public)

Sponsors: Senators Dalton and Phillips.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, AND TO LIMIT THE SERVICE AREA A MUNICIPALITY MAY SERVE WITH PIPED NATURAL GAS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 5E.

"Piped Natural Gas Tax.

"§ 105-187.40. Definitions.

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(4) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"§ 105-187.41. Tax imposed on piped natural gas.

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.027
Over 15,001	.022

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"§ 105-187.42. Liability for the tax.

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.43. Payment of the tax.

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

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

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

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

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

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

(2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.

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

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

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

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

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

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company, a natural gas company, or a regional natural gas district,~~ company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

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

~~(e) Gas Special Charges. — Gross receipts of a natural gas company do not include the following:~~

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

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

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

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

~~(f) Gas City Exemption. — The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.~~"

Section 3. G.S. 105-116.1 reads as rewritten:

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

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district,~~

company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

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

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional natural gas district,~~ company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(c)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased

or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales

to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all

accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or

cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas,~~ electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market'

means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5D of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"§ 105-164.20. Cash or accrual basis of reporting.

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report ~~such~~ sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such~~ the basis ~~of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall~~ selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal

property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other

purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~"

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

(1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.

(2) One-half of the amount of tax payable during the taxable year under Article 5D of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 ~~or~~ and G.S. 105-187.38 or under former ~~distribution under~~ G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5D of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5D of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Section 14. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.2A. Piped gas service area outside of municipalities.**

(a) Service Area. -- A municipality that operates a piped natural gas distribution system has the right to serve all premises being served by it on June 30, 1998, and all premises initially requiring piped natural gas service after June 30, 1998, that are located wholly within the county where the municipality is located. A municipality

may not serve any premises that are outside the service area authorized by this subsection.

(b) Definition. -- As used in this section, the term "premises" has the same meaning as in G.S. 62-110.2. When applying the definition of premises to this section, "electric service" is considered as piped natural gas service."

Section 15. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 16. Sections 1 through 12 of this act become effective January 1, 1999. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-8

201 to 15,000	.0270	
Over 15,001	.0224";	

and on page 3, lines 39 and 40, by striking through those lines;

and on page 14, line 38 through page 15, line 5, by deleting those lines;

and on page 15, line 6, by deleting "Section 15." and substituting "Section 14.";

and on page 15, line 10, by deleting "Section 16." and substituting "Section 15.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-8

Date_____,1998

Comm. Sub. []
Amends Title [YES]

Senator Dalton

moves to amend the bill on page 1, line 3, by deleting "MUNICIPALITIES," and substituting "MUNICIPALITIES AND";

and on page 1, lines 4 through 6, by inserting a period immediately after the word "UNIFORM" and by deleting the remainder of those lines;

and on page 1, lines 21 and 22, by inserting a new definition between those lines to read:

"(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.";

and on page 1, line 22, by deleting "(3)" and substituting "(4);

and on page 2, line 1, by deleting "(4)" and substituting "(5)";

and on page 2, lines 12 through 17, by rewriting those lines to read:

"each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.0470

EXPLANATION OF AMENDMENT:
S1327-ARBX-8

This amendment does four things:

- It changes the third rate category on page 2, line 17, to provide the State with the same amount of revenue under the bill that it anticipates receiving under the current franchise/sales tax structure. The targeted amount of revenue needed is $60 million. This amount is based on the law prior to the directive issued by the Department of Revenue.

- It provides that the tax is calculated on the total volume metered through two or more separate measuring devices if the devices are located on the same premises and are part of the same billing account. (Page 2, line 12) Many large industrial customers have more than one meter because, at the time the meters were installed, there was not a meter that could reliably gauge the large volumes of piped gas received. Although technology has improved and such a meter exist today, it would cost several million dollars to replace the multiple meters with one improved meter. It is the seller's responsibility to replace the meter. If the seller replaces the meter, the cost of doing so will be reflected in its rates. Rather than impose this burden on the seller, and ultimately the consumers, the amendment makes this technical change.

- It makes a technical change on page 3, lines 39 and 40. These lines are no longer needed because regional natural gas districts will not pay a franchise tax under the bill.

- It deletes Section 14, which sets forth the service area of gas cities. The statutes that currently govern the expansion of a gas city's service area will remain. G.S. 159-96 says that a city may not use revenue bonds to finance, in whole or in part, a natural gas distribution system that will serve users outside the corporate limits of the city if service is available or will be available within a reasonable time from a local distribution company. G.S. 160A-312 gives cities the authority to operate public utilities within their corporate limits and, within reasonable limitations, outside their corporate limits. Caselaw provides that certain factors may be considered when determining whether an extension of service is reasonable. As applied to electricity, those factors include the electric providers' current levels of service in the area in question, particularly in the immediate vicinity of the potential customer, and the present readiness, willingness, and ability of each to serve the potential customer.

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/2/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron McKillop	Moore + Van Allen
J Ramquist	NCSOS
Charles Francis	Wood & Francis, PLLC
Jerry Roberts	C.U.C.A.
Beatrice Williams	C.U.C.A.
Charles Reed	NC DHHS - Div Community Health
Sabra Faires	Dept. of Revenue
Joe Pennacchia	Piedmont Natural Gas Co.
Jim Hoard	NC Utilities Comm'n - Public Staff
AW Turner	" "
Jennifer Dorsett	Health Plan Assn
Charles Gill	REVENUE

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/2/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Betty Daniel	DOR
Patti Stowell	DOR
John R. Watts	GO
Andy Schal	DOR
Jay Hare	DOR
Lennie Collins	DOR
Joanne Schoen	N.C. NURSES ASSOC.
Eric Johnson	ECU School of Nursing
Paul Gross	OSBM
Doug Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/2/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc - Propane
Jerry Carter	NC Board of Registration
C. Parker	Bone & Assoc.
Nancy Bradley	NCCBD
Cam Cover	BPMHL
Colin Wells	NC NATURAL GAS
Stuart Dixon	"
Dan Lonyan	N.C. Natural Gas Corp
Andy Romanet	N.C.L.M.
Ron Aycock	N.C. Assn. County Com.
GLORIA SWANSON	

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/2/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Peters	SPASSA.
Alice Garland	Electricities
Peri Morgan	NFIB
Jere Underwood	CPSC
Day Mathews	IBM
David Simmons	ZDA, DA
Brenda Dougherty	Sprint

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 03, 1998

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

FAVORABLE

S.B. **1200** Pharmacy Personnel
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1200

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 3, 1998

12 NOON - ROOM 544

SB 1222 - Meck Neck - Senator Odom

SB 1239 - Expland Qualified Business Tax Credits - Senator Hoyle

SB 1241 - Amendments to Revenue Laws - Senator Hoyle

SB 1252 - Simplify Privilege License Tax - Senator Hoyle

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 3, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Wednesday, June 3rd at 12 noon in Room 544 with Senator Kerr presiding. There were 21 members present. Pages assisting in the committee meeting were Laura McDaniel and Julie Ray from Winston-Salem, sponsored by Senator McDaniel.

SB 1222 - Meck Neck

Senator Odom was recognized to explain his bill. Senator Percell moved that a Committee Substitute be adopted by the committee and the motion was passed. At the conclusion of Senator Odom's explanation of this new committee substitute, on motion by Senator McDaniel, the committee sub was given a Favorable Report by the committee. Copy of Committee Sub., original Bill and Fiscal Note included in the minutes.

SB 1239 - Expand Qualified Business Tax Credits.

Senator Hoyle was recognized to explain his bill and made a motion that a new Committee Substitute be adopted by the committee. The motion carried. Richard Bostic, Fiscal Research Staff, was called upon to explain this new committee sub. And at the conclusion of his explanation, he answered questions from the members. Richard Holcomb with HAHT Software was introduced to the committee and spoke briefly in favor of this bill. (Copy of his remarks included in the minutes.) Upon motion by Senator Gulley, the Committee Sub. was given a Favorable Report by the committee. Copy of Committee Sub., original Bill, Explanation and Fiscal Note included in the minutes.

SB 1241 - Amendments to Revenue Laws.

Senator Hoyle was recognized as the bill sponsor and made a motion that a Committee Substitute be adopted. This was approved by the committee and Senator Hoyle explained the new committee sub. After some general discussion on the bill, Senator Hoyle offered an amendment to the bill which was adopted by the committee on his motion. Senator Webster moved for a Favorable Report for the Committee sub., as amended, and the motion was given a Favorable Report.

SB 1252 - Simplify Privilege License Tax.

Senator Hoyle, the bill sponsor, was recognized to explain SB 1252 and offered an amendment which was adopted on his motion by the committee. At the conclusion of his explanation and after a lengthy discussion of this bill, the committee adjourned without taking any action on the bill. Copy of Bill, Amendment, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1222*
Proposed Committee Substitute S1222-PCS1990

Short Title: Meck Neck. (Local)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE AREA OF MECKLENBURG COUNTY KNOWN AS MECK NECK TO IREDELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The boundary line between Iredell County and Mecklenburg County is hereby changed and relocated so as to divest Mecklenburg County of the territory described below, which territory shall vest in and become part of Iredell County:

That area commonly known as the Meck Neck, being all that land in Mecklenburg County which is connected by land to Iredell County and not connected by land to Mecklenburg County, and the area of Lake Norman in Mecklenburg County around such land, all as more particularly described as follows:

BEGINNING at Latitude 35° at 29.466" North and Longitude 80° at 56.597" West (the "present location of Fixed Lighted Marker D1" as established by the global positioning system, and being approximately .3 mile south of the southerly most point of the Meck Neck Land Area); thence in a northeasterly direction in a straight line which passes through Latitude 35° at 30.024" North and Longitude 80° at 55.736" West (the "present location of Fixed Lighted Marker D5" as established by the global positioning system) to a point in the Mecklenburg County-Iredell County line located near where the old channel of Reeds Creek intersects said line; thence in a westerly direction with the Mecklenburg County-Iredell County line to the point where said line intersects the Lincoln County line; thence in a southerly direction with the Mecklenburg County-Lincoln County line to a point where a straight line

from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended would intersect with the Mecklenburg County-Lincoln County line; thence in a northeasterly direction with said straight line from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended to the Mecklenburg County-Lincoln County Line to the present location of Fixed Lighted Marker D1, the point or place of BEGINNING.

Section 2. (a) On and after July 1, 1998, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in the area described in Section 1 of this act, which previously would have been recorded in Mecklenburg County shall be recorded in Iredell County.

(b) All public records related to residents and property in the area described in Section 1 of this act which were filed or recorded prior to July 1, 1998, in Mecklenburg County, shall remain in Mecklenburg County where filed or recorded, and such records shall be valid public records as to the property and persons involved even though they are recorded in Mecklenburg County, a county where the property is no longer located.

(c) On and after July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be subject to ad valorem taxes in Iredell County for the fiscal year beginning July 1, 1998, to the same extent as it would have been had it been located in Iredell County on January 1, 1998, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 1998, the Mecklenburg County Tax Administrator shall transfer to the Iredell County Tax Assessor the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in the area described in Section 1 except classified motor vehicles which were registered in Mecklenburg County prior to July 1, 1998.

For the fiscal year which begins July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed between January 1, 1998, and June 30, 1998, shall be collected by the Mecklenburg County Tax Collector and all such taxes shall be retained by Mecklenburg County. The taxes on all classified registered motor vehicles registered after June 30, 1998, shall be assessed and collected by the Iredell County Tax Department.

(2) The values established by the Mecklenburg County Tax Administrator on all personal property other than classified registered motor vehicles shall be used by the Iredell County Tax Assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 1998. All such taxes shall be assessed and collected by the Iredell County Tax Department.

(3) The values established by the Mecklenburg County Tax Administrator on all real property shall be reduced by the Iredell County Tax Assessor by applying the difference between one hundred percent (100%) of such values and the Iredell median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 1998. The taxes determined by applying this method will be collected and retained by the Iredell County Tax Collector.

(4) Beginning January 1, 1999, all property in the area described in Section 1 which is subject to ad valorem taxation shall be listed, assessed, and taxed by Iredell County in the same manner as is prescribed by law for all other property located in Iredell County.

(5) The final tax values of property subject to ad valorem taxation in the area described in Section 1 as of January 1, 1998, shall be determined by the Mecklenburg County Tax Administrator or the Mecklenburg County Board of Equalization and Review. Appeals to the North Carolina Property Tax Commission or to the courts shall be defended by Mecklenburg County, and Iredell County shall reimburse Mecklenburg County for all costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 1998, or for prior years on property subject to taxation in the area described in Section 1 of this act shall continue to be valid and enforceable by Mecklenburg County, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. Mecklenburg County shall supply Iredell County with a list of unpaid taxes as of July 1, 1998. Any such taxes collected by Iredell County shall be promptly paid to Mecklenburg County including accrued interest.

(d) On July 1, 1998, Iredell County shall become fully responsible for completing the Street Assessment Program begun by Mecklenburg County pursuant to authority granted to counties by Article 9 of Chapter 153A of the General Statutes to improve Blarney Road and Gainswood Drive to meet the State's requirements for adding such roads to the State Secondary Road System, said roads being located within the area described in Section 1 of this act. To the extent not already completed by July 1, 1998, Iredell County shall become responsible for preparing the Preliminary Assessment Roll, conducting the hearing on the Preliminary Assessment Roll Resolution, adopting the Final Assessment Roll Resolution, publishing the Notice of Confirmation of the Assessment Roll, and collecting the unpaid assessments. Should Mecklenburg County have paid the Department of Transportation for the improvement work performed on said roads before the date that the area described in Section 1 of this act is transferred to Iredell County, Iredell County will reimburse Mecklenburg County for said cost, to the extent not

reimbursed by the property owners, within 90 days of said transfer of the area described in Section 1 of this act to Iredell County.

(e) No cause of action, including criminal actions, involving persons or property in that area described in Section 1 of this act which is pending on July 1, 1998, shall be abated, and such actions shall continue in Mecklenburg County.

(f) The Board of Elections of Mecklenburg County shall immediately after July 1, 1998, transfer the voter registration records pertaining to persons residing in the area described in Section 1 of this act to the Iredell County Board of Elections, and thereafter the registered voters so transferred shall be validly registered to vote in Iredell County.

(g) The Jury Commission of each county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in the area described in Section 1 of this act, said revised jury lists to be effective July 1, 1998.

(h) The area described in Section 1 of this act shall be transferred into Superior Court District 22, District Court District 22, and Prosecutorial District 22. The area described in Section 1 of this act shall remain in the same Congressional District, the same State House of Representatives District, and the same State Senate District.

Section 3. The Meck Neck Transfer Joint Undertaking Agreement made as of November 18, 1997, by and between Iredell County and Mecklenburg County is ratified.

Section 4. Iredell County shall pay, on behalf of residents of the Meck Neck, all tuition charges which might have been imposed by the Iredell County Board of Education on children living in the Meck Neck who attended schools operated by the Iredell County Board of Education prior to July 1, 1998.

Section 5. Any child who was a resident of the area annexed by Section 1 of this act on its date of ratification and who was a student in the Charlotte-Mecklenburg school system during the 1997-98 school year, and the siblings of any such person, may attend school in the Charlotte-Mecklenburg school system without necessity of a release or payment of tuition. Such student, while attending the Charlotte-Mecklenburg school system, shall be considered a resident of Mecklenburg County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to both school systems by the parent or guardian in order to exercise the privilege granted by this section.

Section 6. This act becomes effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1222*

Short Title: Meck Neck. (Local)

Sponsors: Senators Odom; Dannelly, Forrester, Phillips, Rucho, and Winner.

Referred to: State Government, Local Government and Personnel.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ANNEX THE MECK NECK AREA OF MECKLENBURG COUNTY TO IREDELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. (a) The boundary line between Mecklenburg County and Iredell County is hereby changed and relocated so as to divest Mecklenburg County of all the territory now and heretofore embraced in the bounds of Meck Neck as defined in subsection (b) of this section, and vest and include all of said territory in Iredell County, and the said territory shall become and be a part of Iredell County.

(b) "Meck Neck" is that area commonly known as the Meck Neck, and surrounding waters, being all that land in Mecklenburg County which is connected by land to Iredell County and not connected by land to Mecklenburg County, and the area of Lake Norman in Mecklenburg County extending out 300 feet from such land. Such area also includes the area of Lake Norman in Mecklenburg County beginning at a point 300 feet south of the southernmost point of the Meck Neck land area, running due west to the Lincoln-Mecklenburg County line, following that line to the Iredell-Mecklenburg-Lincoln corner, thence along the Iredell-Mecklenburg County line to a point 300 feet west of land, thence along a line 300 feet from land to the beginning point of description in this sentence.

Section 2. Courts. All civil and criminal cases now pending in the Superior Court of Mecklenburg County, or in any other courts held in Mecklenburg County which would have been properly triable in Iredell County, if the territory affected by this act had been a part of Iredell County at the time the cause was instituted, or the right of action therein accrued, or where the criminal offense

charged was committed in the territory affected by this act, shall upon motion of any defendant in any criminal case pending, or upon motion of any party in a civil cause, be transferred to the Superior Court or other proper court of Iredell County. Such motion for removal shall be made no later than the first day of the session of court at which such case would be tried. It shall be the duty of the Clerk of the Superior Court of Mecklenburg County to transmit the original papers in all such cases removed, together with a proper record of all such causes removed, to the Clerk of the Superior Court of Iredell County. All actions, causes or proceedings, matters, and things pending before the Clerk of the Superior Court of Mecklenburg County, which would have been within the jurisdiction of the Clerk of the Superior Court of Iredell County, had the territory affected by this act been a part of Iredell County at the time said cause, proceeding, matter, or thing was begun, or the right therein accrued, shall upon motion of any party thereto or interested therein be transferred to Iredell County and the jurisdiction of the Clerk of the Superior Court of Iredell County to be heard, determined, or proceeded with before him in all respects as if the said cause, matter, or proceeding had originally been begun in Iredell County. Upon such removal, it shall be the duty of the Clerk of the Superior Court of Mecklenburg County from which the removal is made to transmit to the Clerk of the Superior Court of the County of Iredell the original papers in such cause, matter, or proceeding, together with the proper record thereof.

Section 3. Taxes. All taxes levied by Mecklenburg County on the real and personal property located in the territory described in subsection (b) of Section 1 of this act, for the fiscal year beginning July 1, 1997, and for all prior years shall be collected and retained by Mecklenburg County.

Section 4. Juries. The Jury Commission of Iredell County shall include persons within the territory affected by this act on jury lists in Iredell County beginning July 1, 1998, and no person resident in such area shall be included on jury lists in Mecklenburg County after that date.

Section 5. Voter Registration. The Mecklenburg County Board of Elections shall transfer to Iredell County all voter registrations for persons in the territory affected by this act, and such persons shall be registered to vote in Iredell County as of July 1, 1998, without any action on the part of the voter. This act does not affect the boundaries of any State House, State Senate, or Congressional district.

Section 6. (a) Iredell County shall pay to Mecklenburg County for fiscal year 1998-99 and the next nine succeeding fiscal years the annual sum of one hundred thousand dollars ($100,000), plus for the second through tenth fiscal years an additional amount as defined by subsection (b) of this section.

(b) For each year, the additional amount is calculated by FIRST taking the value of the property in the Meck Neck subject to ad valorem taxation minus the value of property in the Meck Neck subject to ad valorem taxation as of January 1, 1998, then DIVIDING that number by the value of the property in the Meck Neck subject to ad valorem taxation minus the value of property in the Meck Neck subject to ad valorem taxation as of January 1, 1998, then MULTIPLYING that number times one hundred thousand dollars ($100,000).

(c) Each payment required by this section shall be made on or before January 15 of each fiscal year.

Section 7. Iredell County shall pay, on behalf of residents of the Meck Neck, all tuition charges which might have been imposed by the Iredell County Board of Education on children living in the Meck Neck who attended schools operated by the Iredell County Board of Education prior to July 1, 1998.

Section 8. Any child who was a resident of the area annexed by Section 1 of this act on its date of ratification and who was a student in the Charlotte-Mecklenburg school system during the 1997-98 school year, and the younger sibling of any such person, may attend school in the Charlotte-Mecklenburg school system without necessity of a release or payment of tuition. Such student, while attending the Charlotte-Mecklenburg school system, shall be considered a resident of Mecklenburg County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to both school systems by the parent or guardian in order to exercise the privilege granted by this section.

Section 9. This act is effective when it becomes law, except that for the purposes of ad valorem property tax situs, listing, and appraisal, the boundary changes in this act are effective as of January 1, 1998, and apply to the 1998-99 tax year and all subsequent tax years.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1222

SHORT TITLE: Meck Neck

SPONSOR(S): Senators Odom, Dannelly, Forrester, Phillips, Rucho, and Winner.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES					

No expected General Fund impact
Will redistribute approximately $600,000 - $700,000 in revenues and expenses between Mecklenburg and Iredell Counties.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Mecklenburg County, Charlotte-Mecklenburg Schools, Iredell County, Statesville-Iredell Schools, Department of Public Instruction.

EFFECTIVE DATE: When law, except for property tax sections, which become effective January 1, 1998.

BILL SUMMARY: The bill will change the territory of Mecklenburg and Iredell Counties by incorporating into Iredell County the "Meck Neck" area (area of Mecklenburg County connected by land to Iredell County but not connected by land to Mecklenburg County) and certain portions of Lake Norman. The bill includes provisions dealing with the transfer of property taxes, public school students, civil and criminal cases, jury lists, and voting regulations. It also requires Iredell to pay Mecklenburg $100,000 per year for the next nine years, as well as a premium on any growth in the value of property in the "Meck Neck" area.

ASSUMPTIONS AND METHODOLOGY: Because there are only 12 students in the Meck Neck area, and all have the option of staying in Mecklenburg, it is assumed that there will be no significant cost to the state associated with student transfers. This is the only item in the bill that could have an impact on the General Fund.

The county impact assumes the following:

1) **Property taxes and valuation**. According to the Mecklenburg County Manager, the total value of property in the "Meck Neck" area is approximately $88 million. The current property tax rate in Iredell county is a base of $0.45/$100.00 assessed value, with a fire assessment of $0.05/$100.00 assessed value. The expected rate in Mecklenburg County for 1998-9 will be approximately $0.665/$100.00, plus a law enforcement assessment of $0.095/$100.00. Mecklenburg County also pays a service contract of $215,000for the area, which they will not pay if the bill is passed. New construction growth in the "Meck Neck" area is approximately 2.14%.
2) **Other costs.** It is assumed that the costs associated with transferring court documents, jury lists, etc. will be minimal. Because it is impossible to determine how many of the 12 school students will transfer to Iredell schools, no accurate estimate of the cost associated with the transfer is possible.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: May 28, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1239
Proposed Committee Substitute S1239-PCS1992

Short Title: Expand Qualified Business Tax Credit. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM THE QUALIFIED BUSINESS TAX CREDIT AND TO INCREASE THE CAP FROM SIX MILLION DOLLARS TO NINE MILLION DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 443 of the 1993 Session Laws is repealed.

Section 2. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 1999.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 3. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~six million dollars ($6,000,000).~~ nine million dollars ($9,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds ~~six million dollars ($6,000,000),~~ nine million dollars ($9,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of ~~six million dollars ($6,000,000)~~ nine million dollars ($9,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer."

Section 4. Section 3 of this act is effective for investments made on or after January 1, 1997. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1239

Short Title: Expand Qualified Business Tax Credit. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM THE QUALIFIED BUSINESS TAX CREDIT AND TO INCREASE THE CAP FROM SIX MILLION DOLLARS TO TWELVE MILLION DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 443 of the 1993 Session Laws is repealed.

Section 2. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 1999.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 3. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~six million dollars ($6,000,000).~~ twelve million dollars ($12,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds ~~six million dollars ($6,000,000),~~ twelve million dollars ($12,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of ~~six million dollars ($6,000,000)~~ twelve million dollars ($12,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer."

Section 4. Section 3 of this act becomes effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1239:
Proposed Senate Committee Substitute
Expand Qualified Business Tax Credit

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 1, 1998
SPONSOR: Senator Hoyle

Both Senate Bill 1239 and the proposed committee substitute increase the cap on the total amount of all tax credits allowed to taxpayers who purchase the equity or subordinated debt of a qualified business venture or a qualified grantee business directly from that business from $6 million to $12 million. Both bills also repeal the sunset provision that is effective for investments made on or after January 1, 1999. The proposed committee substitute makes the increase in the cap effective for investments made on or after January 1, 1997. The repeal of the sunset provision is effective when the bill becomes law.

History of the tax credits for qualified business tax investments

The qualified business tax credits were enacted in August 1987. The purpose of the credits was to promote economic development for certain business developments. The initial credits applied to both corporations and individual taxpayers and there was a cap on the total amount of all tax credits of $12 million. The credit could also be taken only for investments in North Carolina businesses. In 1996, the General Assembly reduced the $12 million cap to $6 million, placed the sunset on the business tax credits, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The repeal of this last requirement was due to the Fulton case which held that it was unconstitutional to provide tax preferences to North Carolina corporations but not to out-of-state corporations.

Current Law

An individual taxpayer is allowed a tax credit against the taxpayer's individual income tax when the taxpayer purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim his allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited

liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next 5 years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. (This cap is increased to $12 million in SB 1239.) The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer.

Both the Bill and the proposed committee substitute also repeal the sunset on the qualified business tax credit. Under current law the tax credits for qualified business investments are repealed effective for investments made on or after January 1, 1999. The proposed committee substitute makes the increase in the cap effective for investments made on or after January 1, 1997. This would mean that the credit would affect the 1998-1999 budget, because the fiscal impact of the credit would be felt when taxpayers, who made investments in 1997, paid their taxes on April 1999 for taxable year 1998.

The credits are allowed only for investments in a qualified business venture or qualified grantee business that has registered with the Securities Division within the Secretary of State's office.

A qualified business venture must meet the following requirements:

1. It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.
2. It was organized after January 1 of the calendar year in which it filed its application, or during the most recent fiscal year before the application it had gross revenues of no more than $5 million.
3. It does not engage as a substantial part of its business in providing professional services, construction or contracting, selling or leasing at retail, investing, entertainment or recreation, or personal grooming or cosmetics service.
4. It is not organized primarily to manage or operate real estate.

A qualified grantee business must meet the following requirements:

1. It has received during the preceding 3 years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for

Engineering, Technology, and Science, or the Federal Small Business Innovation Research Program.

A qualified business venture and qualified grantee business must renew their registration annually in order to remain qualified. The following filing fees apply:

application of registration	$100
application for renewal of registration	$ 50
application for reinstatement	$ 50

As of October 1, 1997, only two qualified business ventures were located out of state.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1239 (Proposed Committee Substitute)

SHORT TITLE: Expand Qualified Business Tax Credit

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Repeal Sunset			**($6 mil.)**	**($6 mil.)**	**($6 mil.)**
Increase Cap		**($6 mil.)**	**($6 mil.)**	**($6 mil.)**	**($6 mil.)**
Total - GF		**($6 mil.)**	**($12 mil.)**	**($12 mil.)**	**($12 mil.)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Department of the Secretary of State

EFFECTIVE DATE: Section 3 (increasing the cap) is effective for investments made on or after January 1, 1997. The remaining sections of the act are effective when it becomes law.

BILL SUMMARY: The proposed committee substitute repeals the sunset on the qualified business tax credit and increases the cap on these credits from $6 million to $12 million.

BACKGROUND: The qualified business tax credits given since 1993 are as follows:

1993	$4,711,913
1994	$6,011,513
1995	$3,523,894
1996	$4,677,221
1997	$6,000,000 *
1998	$4,893,891 **

* The Department of Revenue received requests for $9,264,679 in credits, but the General Assembly limited the credit amount to $6 million in 1997.

** This amount represents the applications processed as of May 28, 1998. (applications pending)

ASSUMPTIONS AND METHODOLOGY:

REPEAL SUNSET

The current tax credit for qualified business ventures expires for investments made on or after January 1, 1999. This means that investments made in 1998 will be taken in tax year 1999. The last General Fund impact for this credit will be in FY 99-00 when individual income tax returns are filed in the spring of 2000. (carry forwards will extend some of the credits into future years). Budget availability estimates for future years assume the credit will sunset in 1999. **Removal of the sunset in 1999, effective for tax year 2000, will produce an annual General Fund revenue loss of $6 million for fiscal year 2000-01 and beyond.**

CAP INCREASE

Section 3 of the bill will increase from $6 million to $12 million the amount of credits allowed taxpayers each year. Investments made in 1997 will be eligible for the increased credit amount in tax year 1998. The Department of Revenue does not anticipate any fiscal impact from this change in FY 1998-99. As of May 28, 1998, the Department had processed $4,893,891 in 1997 credits. The Department estimates that the 35 files remaining to be processed will not push the total over $6 million. The decline from the $9.2 million in 1996 to $6 million in 1997 can be partly explained by limitations on corporations and pass-through entities in 1997.

For budgetary planning and projection purposes, the fiscal impact of the increased cap for FY 1999-00 and beyond is $6 million per year. The state's General Fund will be legally obligated to award a credit for each legitimate investment up to the $12 million cap. If fully utilized, the increased credit amount will affect future year budget availability. Based on the considerable interest in this credit by Certified Public Accountants, investment firms, the Council for Entrepreneurial Development, and others, it is not unreasonable that the maximum amount of credits will be used in future years.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: June 2, 1998

NORTH CAROLINA DEPARTMENT OF REVENUE

QUALIFIED BUSINESS INVESTMENT TAX CREDIT PROGRAM (May 28, 1998)

APPLICATIONS FILED			AMOUNT OF INVESTMENT			AMOUNT OF CREDIT			
Year of Investment	Individuals	Corporations/ Pass-throughs		Individuals	Corporations/ Pass-throughs	Total	Year credit claimed	Individuals	Corporations/ Pass-throughs	Total
1988	71	0		4,530,530	-	4,530,530	1989	1,028,882	-	1,028,882
1989	90	33		3,136,940	2,257,375	5,394,315	1990	784,235	564,345	1,348,580
1990	252	32		9,316,804	2,497,700	11,814,504	1991	2,270,392	624,425	2,894,817
1991	254	30		13,315,323	2,427,220	15,742,543	1992	3,327,527	606,805	3,934,332
1992	274	29		17,411,578	2,356,215	19,767,793	1993	4,122,857	589,056	4,711,913
1993	438	5		44,842,801	22,975	44,865,776	1994	6,005,769	5,744	6,011,513
1994	291	17		9,495,987	5,958,898	15,454,885	1995	2,285,551	1,238,343	3,523,894
1995	347	17		10,633,265	10,214,891	20,848,156	1996	2,583,748	2,093,473	4,677,221
1996	475	45		15,222,894	24,575,538	39,798,432	1997	2,322,317	3,677,683	6,000,000
(1) 1997	560	31		15,750,578	6,179,974	21,930,552	1998	3,886,396	1,007,495	4,893,891
	3052	239	Total Investments	143,656,700	56,490,786	200,147,486	Total Credits	28,617,674	10,407,369	39,025,043

Note: Effective for investments on or after January 1, 1996, G.S. 105-163.012 limits the total tax credits that can be claimed for the tax year to $6,000,000. In 1997, taxpayers applied for total tax credits of $9,264,679. Therefore, each taxpayer's credit was reduced to approximately 65 percent of the amount claimed.

(1) The amounts on this line represent applications processed as of May 28, 1998.

1997 Qualified Business Development Credits

QUALIFIED BUSINESS DEVELOPMENT CREDITS

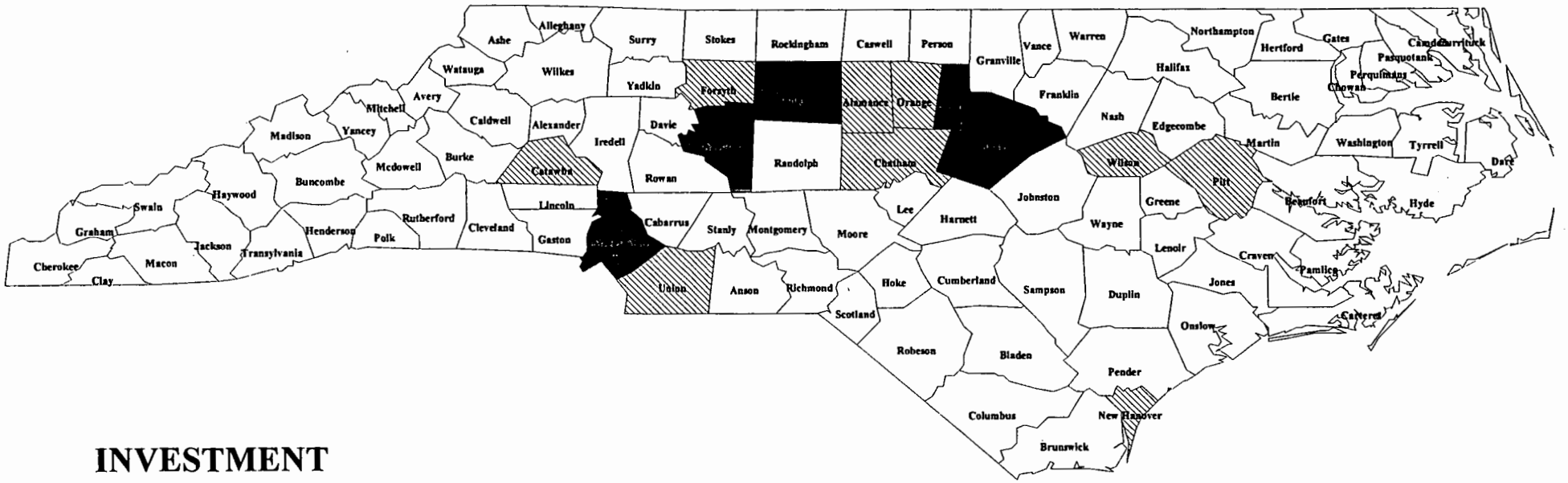
	Investment	Credit
C3, Inc.	$1,607,812	$401,953
Heartland Apparel, Inc.	1,400,000	350,000
3D Ultrasound, Inc.	1,388,376	347,095
Aurora Ventures II, LLC	1,051,491	262,873
Kindermusik International, Inc	899,998	225,001
Sports Training & Entertainment Products, Inc.	800,000	200,000
Wave Media, LLC	722,500	180,625
Wellington Technical Yarns, Inc.	712,500	178,125
Intersouth Partners III, LP	675,348	168,840
Secant Network Technologies, Inc.	2,801,418	162,854
Cranford Dimensions, LLC	500,000	125,000
Digital Optics Corporation	492,868	123,217
National Diagnostics, Inc.	489,500	122,375
Investment Mortgage Corporation	415,000	103,750
LipoMed, Inc.	400,547	100,137
Accipiter, Inc.	358,052	89,513
Long Distance Technologies, Inc.	345,000	85,000
Maize Genetic Resources, Inc.	336,348	84,087
Virtus Corporation	291,404	72,851
Ganymede Software, Inc.	289,620	72,406
International Fiberoptic Technologies, Inc.	276,500	69,125
Trimeris, Inc.	275,801	68,950
IntraSoft, Inc.	272,657	68,164
Lambda Technologies, Inc.	472,307	68,077
Fypro, Inc.	250,000	62,500
Link Technology, Inc.	237,500	59,375
Advanced Digital Cable, Inc.	225,000	56,250
Remote Source Lighting International, Inc.	214,300	53,575
Ultimus LLC	208,684	52,171
Krenitsky Pharmaceuticals, Inc.	187,000	46,750
Derivatives Net, Inc.	182,600	45,650
Outpurchasing, Inc.	181,849	45,462
Accusport International, Inc.	180,000	45,000
Sherry Industries of N.C., Inc.	178,165	44,541
Symphony Entertainment, LLC	175,000	43,750
Becklyn Publishing Group, Inc.	160,000	40,000
OxiDyn, Inc.	159,207	39,801
The Johnson Beer Company, Inc.	147,590	36,895
Multimedia Design Corporation	125,000	31,250
Novrum CRC, Inc.	123,118	30,780
Access Point, Inc.	122,465	30,617
Training Innovations Group LLC	112,500	28,125
A&J Publishing,Inc.	110,021	27,505
Paragon Advanced Technology, Inc.	110,000	27,500

1997 Qualified Business Development Credits

	Investment	Credit
Auspice, Inc.	$100,000	$25,000
Eat a Peach Pictures LLC	90,000	22,500
Alternate Realities Corporation	85,068	21,267
CardGuard International, Inc.	81,000	20,250
ClinEffect Systems, Inc.	77,000	19,250
Southeast Interactive Technology Fund II, LLC	75,000	18,750
InvoiceLink, LLC	72,500	18,125
Touch Scientific, Inc.	62,113	15,527
Waste Reduction Products Corporation	60,000	15,000
BillPayers, Inc.	57,040	14,260
NetPath, Inc.	55,000	13,750
Xanthon, Inc.	52,000	13,000
AndCare, Inc.	50,001	12,500
Mediappraise Corporation	50,002	12,500
Epigenesis Pharmaceuticals, Inc.	35,000	8,750
Magnetic Imaging Technologies, Inc.	32,691	8,173
The Aurora Funds	30,000	7,500
SciQuest, Inc.	28,528	7,132
Encelle, Inc.	24,999	6,250
Ensolve Biosystems, Inc.	25,000	6,250
FloLogic, Inc.	25,000	6,250
Sofwave, Inc.	25,000	6,250
McGinn Technologies USA, Inc.	20,000	5,000
Hextek Technologies	15,000	3,750
Shadow Solutions, Inc.	15,000	3,750
Healthware Corporation	10,000	2,500
Wild Bunch Films, Inc.	10,000	2,500
Triangle Biomedical Sciences, Inc.	8,725	2,181
Tristate Investment Group II, LLC	6,819	1,705
TOTAL	$21,943,532	$4,897,135

Note: The amounts represent the applications processed as of May 28, 1998.

1997 Qualified Business Investment by County



INVESTMENT

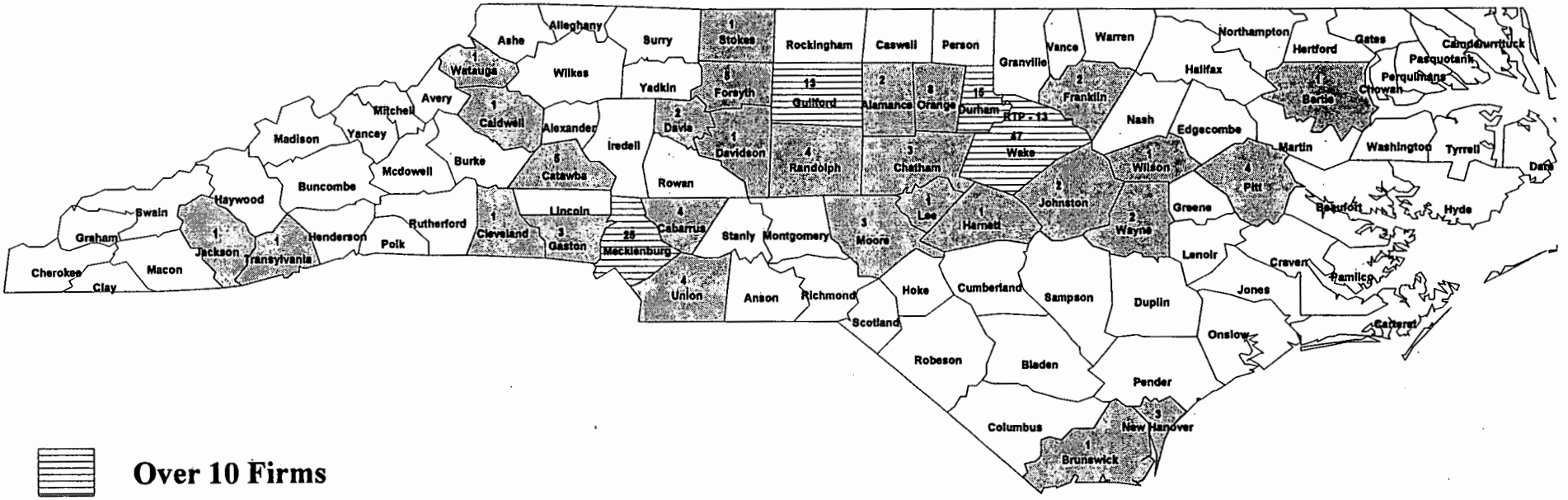
Above $1,000,000

Below $1,000,000

County	Investment	Credit
RTP (Wake/ Durham)	$6,451,187	$1,075,300
Wake	4,446,308	1,061,577
Mecklenburg	3,307,558	825,637
Durham	2,026,413	506,604
Davidson	1,400,000	350,000
Guilford	1,307,703	326,927
New Hanover	857,500	214,375
Catawba	525,000	131,250
Forsyth	467,500	116,875
Alamance	331,500	82,875
Orange	282,657	70,664
Union	159,207	39,801
Wilson	81,000	20,250
Pitt	59,999	15,000
Chatham	15,000	3,750
Total	**$21,718,532**	**$4,840,885**
Georgia	$225,000	$56,250

Fiscal Research Division **June 2 1998**

Location of Qualified Business Ventures



Over 10 Firms

Under 10 Firms

Fiscal Research Division **June 2 1998**

Remarks to the Senate Finance Committee on SB1239
by
Richard Holcomb

HAHT Software

Chairman

HAHT Software was founded in June of 1995. HAHT received initial seed funding of $175,896.00 from a group of local investors. This amount qualified the investors for the qualified business tax credit and was a major factor in their decision to invest. Since that initial funding by local investors, HAHT Software has raised a total of $21,000,000.00 from professional venture capital sources. This large amount of professional funding makes HAHT the largest funded software company in the Southeastern United States and one of the largest ever funded nationwide. Today, less than 3 years after the initial funding, HAHT Software is growing at a rate of 400% annually, has over 100 employees, and a projected 1998 payroll of $5,700,000.00. We have brought in over $100 of outside capital for every dollar that was invested by individuals under the Qualified Business Tax Credit; have created 100 new high wage jobs; and have generated payroll taxes an order of magnitude greater than the amount of the actual tax credit.

In addition to HAHT, I have personally invested in or acted as an advisor to 6 other companies that received their initial funding from individual investors who qualified for the credit. These companies have raised several million dollars from local NC investors who qualified for the credit. In many cases these investors had never invested in high risk entrepreneurial activities before and the 25% tax credit was a major factor in their investment decision. Although there is no way to prove it, I believe that at least half of these companies would never have been established had it not been for the credit. All 6 of these companies are now growing and doing well except for one which was purchased in its second year of operation for $10,000,00.00 by a public company.

My personal experience is that the credit is one of the primary factors in making an investment decision in these very high risk ventures. If the entrepreneurial community is going to continue to grow and flourish in NC it is essential that our young companies have access to desperately needed seed capital. This capital comes almost exclusively from individual sources. In my opinion, the existing Qualified Business Tax Credit is the single most beneficial legislation in NC for promoting this vital sector of the state's economy. I fully support the bill to extend the credit and increase the cap of the tax credit.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Proposed Committee Substitute S1241-PCS8838

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, AND TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any~~

~~portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day

of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and~~

~~costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that~~

~~such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this

State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. --~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. -- A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the~~

~~collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in

any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except~~

~~that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the

period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. This act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

S1241-ARB-1 Page 1 of __

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator Hoyle

moves to amend the bill on page 7, line 27, by rewriting the line to read:
"penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check,";

and on page 8, lines 17 through 20, by rewriting the lines to read:
"~~the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty, five percent~~ filing, the Secretary shall assess a penalty equal to (5%) of the amount of the tax if the failure is";

and on page 9, line 20, by deleting "Double" and substituting "double";

and on page 13, line 12, by deleting "refund" and substituting "application".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1241

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors: Senators Hoyle, Cochrane, Dalton, Kerr, Hartsell, and Webster.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, AND TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much~~

~~of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or~~

~~deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations

and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~

State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. --~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. -- A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the check shall be imposed, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant

to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause,~~ filing, there shall be added to the amount required to be shown as tax on the return, as a penalty, five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than~~

~~personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~e. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I

felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the~~

~~Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the

period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the refund is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. This act becomes effective July 1, 1998.

EXPLANATION OF SENATE BILL 1241:
Amendments to the Revenue Laws

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 3, 1998
SPONSOR: Senator Hoyle

G.S. 105-237 gives the Secretary the authority to waive or reduce all penalties imposed under the tax laws, except the penalty for bad checks. In practice, the authority to waive or reduce penalties is delegated to approximately 55 individuals who are in the collection field offices and the audit department located in Raleigh. The Department of Revenue has a penalty policy that these employees must follow to ensure consistent treatment among taxpayers. The Department of Revenue is currently revising its penalty guidelines. As part of the review process, the Department looked at all of the penalty provisions in Chapter 105. Based upon its review of the penalty provisions, the Department of Revenue requested the Revenue Laws Study Committee to recommend the following changes to the revenue laws:

Section	Explanation
1	Modernizes the statute that determines when inheritance taxes are due. It conforms the penalties for late payment with the general penalty provisions in G.S. 105-236: 5% failure to file penalty and a 10% failure to pay penalty. It also conforms the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
2	Removes the $100 penalty that may be assessed against a superior court clerk who fails to file the required monthly reports of death. The penalty is enforceable by a court action. The Department does not enforce this penalty. If a clerk does not perform the necessary duties, the Department contacts the Administrative Office of the Courts.

Section	Explanation
3	This statute applies to a personal representative who fails to report federal changes in the value of an estate. This section removes the reference to 105-236 because there is not an appropriate penalty in that section. Besides, the estate is already subject to failure to file return and failure to pay tax when due penalties.
4	Modernizes and streamlines the privilege license statute by removing redundant provisions. Incorporates the provisions of G.S. 105-112 so that all of the provisions concerning the need to obtain a privilege license are in one statute. It also conforms the penalty provisions with G.S. 105-236. By conforming to the penalty provisions of G.S. 105-236, it removes the Class 1 misdemeanor criminal penalty for operating without a license.
5	Repeals a statute relating to the criminal provision that is deleted in Section 4 of the bill.
6	Removes the penalty for failing to display the privilege license in a conspicuous place. The remaining provisions have been incorporated into G.S. 105-109.
7	This statute addresses the failure to pay tobacco products tax when due. The statute conforms the penalty with Article 9. The current failure to pay tobacco products tax when due penalty is 50% of the amount of tax due. By conforming with Article 9, the penalty amount will be 10% of the amount of tax due.
8	Provides that a refund of the excise tax paid on sacramental wine is barred if filed more than 3 years after the due date. The current law provides a reduction of the amount refunded for late applications and that the refund is barred after 6 months.
9	This statute concerns the penalties that may be assessed against a corporation that fails to file a consolidated return when applicable. This section deletes a reference to a penalty provided "in this act" because one does not exist. It clarifies that Article 9 penalties, as well as dissolution under G.S. 105-230, are the appropriate remedies.
10	This section removes a provision that is moved to G.S. 105-253, contained in section 18 of the bill. The provision is moved so that all of the penalty provisions are contained in one statute.
11	Specifies that the additional tax is imposed as a penalty. The Secretary has the ability to waive penalties under G.S. 105-237.

Section	Explanation
12	Provides that a refund of sales tax paid is barred if filed more than 3 years after its due date.
13	Provides that Article 9 penalties will apply.
14	This statute provides that a corporation or a LLC's article of incorporation or certificate of authority may be suspended if the taxpayer does not pay a tax due or file a report when due. This section adds a provision currently contained in G.S. 105-231 because G.S. 105-231 is repealed in section 15 of the bill.
15	Repeals the statute and moves the relevant provisions to G.S. 105-230, in section 14 of this bill. This statute provides a penalty for exercising functions after the suspension of a corporation's articles of incorporation or a LLC's certificate of authority. The penalty of $100 to $1,000 is recoverable in an action brought in Superior Court. The Department does not enforce this penalty. The suspension or the articles or certificate is severe by itself.
16	This statute is the statute that contains most of the revenue law penalties. This section includes a statement that clarifies that penalties assessed by the Secretary are assessed as additional taxes. This language conforms with the definition of "tax" contained in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount." In some statutes, the term "additional tax" is used instead of the term "penalty". This statement clarifies that the additional tax is a penalty, and as such may be waived by the Secretary under G.S. 105-237. Although this does not allow the taxpayer to deduct the penalty on the federal income tax return, it does ensure the taxpayer that the full administrative and judicial remedies applicable to tax assessments are applicable to assessments of tax penalties. This section also makes several substantive changes: • Provides a uniform penalty for all tax deficiencies that exceed 25% of the tax liability. The general 10% negligence penalty applies to all taxes. The large tax deficiency language specifies that it does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

Section	Explanation
16	• It deletes the penalty for failing to file partnership and fiduciary informational returns for two reasons: the Department does not assess penalties against these fiduciaries and second, the Department does not generally assess a penalty that is less than $30 because it costs more to assess than it is worth. • It deletes the penalty for failing to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid because the penalty amount is an ineffective deterrent and the Revenue Laws Study Committee voted to repeal the penalty rather than increase it.
17	Deletes the $100 penalty that the Tax Review Board may impose for frivolous petitions because it is not used. The dismissal of the petition appears to be sufficient "punishment".
18	Repeals the statute that allows the Secretary of Revenue to ask the Attorney General's office to bring a court action for an injunction restraining a corporation or public utility from doing business until its return is filed and the tax is paid. The Department uses the grant of authority under G.S. 105-230 when necessary; it does not use the provisions of this statute.
19	Expands the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC. The taxes addressed by this statute are sales and use taxes, motor fuel taxes, and income tax withholding taxes.
20	Provides that a motor carrier that fails to file a timely report is subject to a $50 penalty. This section deletes the words "up to" and the higher penalty for subsequent failures. This change reflects current Department practice since it imposes a flat penalty $50.
21	Provides that an application for a motor fuel tax refund is barred if submitted more than 3 years after it is due.
22	Repeals the statute concerning a reduction or denial of a late motor fuel tax refund application. The provision is incorporated into G.S. 105-449.108 in Section 21 of this bill.
23	Provides that this act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1241 (First Edition)

SHORT TITLE: Amendments to the Revenue Laws

SPONSOR(S): Senator Hoyle, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	see **ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act becomes effective July 1, 1998

BILL SUMMARY: The bill gives uniformity and simplicity to a number of penalties imposed by the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY: This bill uses GS 105 - 236 as the standard for penalties charged by the Department of Revenue. A number of technical or clarifying changes are made in the bill to bring uniformity to a list of penalties imposed by the Department. Some penalties are deleted because they are not used by the Department of Revenue, such as the penalty on the clerks of Superior Court in Section 2 and the penalty for frivolous petitions in section 17. However, in the attempt for uniformity, some sections of the bill may create a small revenue impact (less than $100,000). Section 7 lowers the penalty on the tobacco products tax and thus should produce a decrease in revenue. Sections 4 and 9 have higher penalties than the previous statute and may create a revenue gain. **Unfortunately, no estimate can be made because the Department does not collect data on these penalties.**

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: June 1, 1998

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 3, 1998

12 NOON - ROOM 544

SB 1222 - Meck Neck - Senator Odom

SB.1239 - Expand Qualified Business Tax Credits - Senator Hoyle

SB 1241 - Amendments to Revenue Laws - Senator Hoyle

SB 1252 - Simplify Privilege License Tax - Senator Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1252

Short Title: Simplify Privilege License Tax. (Public)

Sponsors: Senators Hoyle, Cochrane, Kerr, and Hartsell.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2.

"~~Schedule B. License~~ Privilege Taxes."

Section 2. G.S. 105-33 reads as rewritten:

"**§ 105-33. Taxes under this Article.**

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed ~~as State license taxes~~ for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named,~~ named. ~~and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.~~ License Taxes. -- A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a fiscal year, begins to engage in an activity for which this Article requires a license.

Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) ~~Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.~~ Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

~~(d) The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.~~

(e) Repealed by Session Laws 1989, c. 584, s. 1.

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a~~

~~delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.~~

~~(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.~~

(h) Liability Upon Transfer. -- ~~It shall be the duty of a~~ A grantee, transferee, or purchaser of any business or property subject to the State ~~license~~ taxes imposed in this Article ~~to~~ must make diligent inquiry as to whether the State ~~license~~ tax has been ~~paid, but when such~~ paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State ~~license~~ taxes imposed under this Article, ~~such~~ the property, while in the possession of ~~such~~ the innocent purchaser, ~~shall not be~~ is not subject to any lien for ~~such State license~~ the taxes.

~~(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.~~

~~(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.~~

(k) Repealed by Session Laws 1987, c. 190."

Section 3. G.S. 105-33.1 reads as rewritten:

"**§ 105-33.1. Definitions.**

The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

~~(1)~~ (1a) Code. -- Defined in G.S. 105-228.90.

~~(2) Municipality. -- A municipal corporation organized under the laws of this State.~~

(3) Person. -- Defined in G.S. 105-228.90.

(4) Secretary. -- ~~The Secretary of Revenue.~~ Defined in G.S. 105-228.90."

Section 4. G.S.105-37.1 reads as rewritten:

"**§ 105-37.1. Amusements -- Forms of amusement not otherwise taxed.**

(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, ~~offering~~ offering, or managing any form of entertainment or amusement not otherwise taxed ~~or specifically exempted in this Article,~~ for which an admission is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where such admission charges are made.~~

~~In addition to the license tax levied above, such person, firm, or corporation shall pay an additional~~ a tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form~~

~~as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ the gross receipts for the previous month, and the ~~additional~~ tax ~~herein levied~~ shall be paid monthly at the time ~~such~~ the reports are made. ~~The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.~~

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each location where such charges are made, and, in addition,~~ a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The ~~additional~~ tax upon gross receipts shall be levied and collected ~~in accordance with such regulations as may be made by the Secretary of Revenue.~~ as prescribed by the Secretary. ~~No tax shall be levied on admission fees for high school and elementary school contests.~~

~~Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as herein before required.~~

~~Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.~~

~~The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.~~

(b) Counties shall not levy any license tax on the business taxed under this section, but cities ~~and towns~~ may levy a license tax not in excess of ~~one-half the base tax levied herein.~~ twenty-five dollars ($25.00).

~~(e) No tax shall be collected pursuant to this section with respect to entertainments or amusements offered or given on the Cherokee Indian reservation when the person, firm or corporation giving, offering or managing such entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.~~

~~(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section may play a "still date" in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988.~~"

Section 5. G.S. 105-38 reads as rewritten:

"**§ 105-38. Amusements -- ~~Circuses, menageries, wild west, dog and/or pony shows, etc.~~** Circuses and other traveling amusements.

(a) Every ~~person, firm, or corporation~~ person engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other similar show, ~~exhibition~~ exhibition, or ~~performance similar thereto,~~ performance not taxed in other sections of this Article, shall ~~apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license a tax of fifty dollars ($50.00) for each day or part of a day for each place in the State where exhibitions or performances are to be given.~~ pay a tax upon the gross receipts of the business at the rate of three percent (3%).

(b) Every ~~person, firm, or corporation~~ person by whom any show or exhibition taxed under this section is owned or controlled shall file with the ~~Secretary of Revenue,~~ Secretary, not less than five days before entering this State for the purpose of ~~such~~ the exhibitions or performances therein, a statement, under oath, setting out in detail the dates, times, and places for the exhibitions or performances. ~~such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the Secretary of~~

~~Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.~~

~~(c) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.~~

~~(d) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars ($1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.~~

~~(e) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.~~

~~(f) Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of three percent (3%). The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purpose of this Subchapter.~~

(g) Repealed.

(h) ~~Counties, cities, and towns~~ Counties and cities may levy a license tax on the business taxed under this section not in excess of ~~one half of the license tax levied by the State, but shall not levy a parade tax or a tax under subsection (g) of this section.~~ twenty-five dollars ($25.00) for each day or part of a day for each place where exhibitions or performances are to be given."

Section 6. G.S. 105-40 reads as rewritten:

"**§ 105-40. Amusements ~~— Certain exhibitions, performances, and entertainments~~ exempt from ~~license~~ tax.**

The following forms of amusement are exempt from the taxes imposed under this Article:

(1) All exhibitions, performances, and entertainments, except as in this Article expressly mentioned as not exempt, produced by local talent exclusively, ~~and~~ for the benefit of religious, charitable, benevolent or educational purposes, ~~and where~~ as long as no compensation is paid to ~~such local talent shall be exempt from the State license tax.~~ the local talent.

(2) The North Carolina Symphony Society, Incorporated, as specified in G.S. 140-10.1.

(3) All exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the North Carolina General Statutes where the society or association has obtained a permit from the Secretary to operate without the payment of taxes under this Article.

(4) All outdoor historical dramas, as specified in Article 19C of Chapter 143 of the North Carolina General Statutes.

(5) All high school and elementary school athletic contests.

(6) The first one thousand dollars ($1,000) of gross receipts derived from dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools when the entire proceeds of the dances or other amusements are used exclusively for the school or civic and charitable purposes of the organizations and not to defray the expenses of the organization conducting the dance or amusement. The mere sponsorship of a dance or another amusement by a school, civic, or fraternal organization does not exempt the dance or other amusement, because the exemption applies only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization.

(7) All dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed

location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events.

(8) A person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

(9) All entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council."

Section 7. G.S. 105-41 reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ~~($50.00); the tax does not apply to an individual who is at least 75 years old.~~ ($50.00).

(1) An attorney-at-law.

(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.

(4) A registered land surveyor, as defined in G.S. 89C-3.

(5) An architect.

(6) A landscape architect.

(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.

(8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.

(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.

(11) A mortician or embalmer licensed under G.S. 90-210.25.

(b) ~~Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.~~ The following persons are exempt from the tax:

(1) A person who is at least 75 years old.

(2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.

(3) A blind person engaging in a trade or profession as a sole proprietor. A 'blind person' means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

~~(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in the employ of another, and pay for such license a tax of fifty dollars ($50.00).~~

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or ~~corporation: Provided, that a~~ corporation. A licensed photographer having a located place of business in this ~~State, shall be~~ State is liable for a license tax on each agent or ~~solicitor,~~ solicitor employed by ~~him~~ the photographer for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, ~~such~~ the person ~~shall be~~ is liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

~~(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall~~

~~be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commission having authority of law in this State with respect to the granting or continuing of license to practice any such profession.~~

(h) ~~Counties, cities, or towns shall~~ Cities may not levy any license tax on the business or professions taxed under this ~~section;~~ section. ~~and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State.~~

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required."

Section 8. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"**§ 93B-15. Members of armed forces and merchant marine exempt from license fees.**

Any person entering into the armed forces of the United States or in the merchant marine shall be during the period of service exempt from paying any license fees to any licensing board or commission or to the State of North Carolina in which the payment of the license fees is by law required as a condition to the continuance of the privilege to engage in any trade or profession. The person upon being discharged from service shall have all the rights and privileges to engage in that person's profession upon payment of any fees that become due."

Section 9. G.S. 105-83 reads as rewritten:

"**§ 105-83. Installment paper dealers.**

(a) Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of ~~debt, where~~ debt for which, at the time of or in connection with the execution of ~~said~~ the instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of ~~such~~ the obligations, ~~shall apply for and obtain from the Secretary a State license for the privilege of engaging in such business or for the purchasing of such obligations in this State, and shall pay for such license an annual tax of one hundred dollars ($100.00).~~

~~(b) In addition to obtaining a State license from the Secretary, each person subject to the tax levied in subsection (a)~~ shall submit to the Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making the statement, of the total face value of the ~~installment paper, notes, bonds, contracts, and evidences of debt~~ obligations dealt in,

bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred and seventy-five thousandths of one percent (.275%) of the face value of these obligations.

(c) If any person deals in, buys, or discounts any obligations described in this section without ~~obtaining the license required by this section or~~ paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the person ~~obtains the license and~~ pays the amount of tax, penalties, and interest due.

(d) This section does not apply to corporations liable for the tax levied under G.S. 105-102.3.

(e) ~~Counties, cities, and towns~~ Cities shall not levy any license tax on the business taxed under this section."

Section 10. G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

There is ~~hereby~~ imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, ~~be~~ is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege ~~tax~~ tax. A report and the privilege tax are due by the first day of July of each year on forms provided by the Secretary. The tax rate is ~~in the amount of~~ thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as ~~hereinafter provided.~~ provided in this section. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory ~~authorities; provided,~~ authorities. If a bank has been in operation less than a calendar year, then the assets upon which the tax is levied shall be determined by multiplying the average of the total assets by a fraction, the denominator of which is 365 and the numerator of which is the number of days of operation. ~~however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where~~ If a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the

average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed ~~hereunder~~ in this section shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. ~~Counties, cities and towns shall~~ Cities may not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 11. G.S. 105-102.6(d) reads as rewritten:

"(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.
(2) Tonnage of nonvirgin newsprint consumed.
(3) Gross tonnage of newsprint consumed.
(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
(5) Recycled content tonnage.
(6) Recycled content percentage.
(7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content percentage provided in subsection (c) shall pay a tax of fifteen dollars ($15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No ~~county or municipality~~ city may impose a license tax on the business taxed under this section."

Section 12. G.S. 105-107 is repealed.

Section 13. G.S. 105-109(a) is repealed.

Section 14. G.S. 105-113.68(a)(6) reads as rewritten:

"(6) 'License' means a certificate, issued pursuant to this Article ~~by the Secretary or~~ by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry."

Section 15. G.S. 105-113.69 reads as rewritten:

"**§ 105-113.69. License tax; effect of license.**

The taxes imposed in ~~Parts 2 and 3~~ Part 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license. Licenses issued ~~by the State or a local government~~ under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter ~~18B,~~ 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter."

Section 16. G.S. 105-113.70 reads as rewritten:

"**§ 105-113.70. Issuance, duration, transfer of license.**

(a) Issuance, Qualifications. -- Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. ~~All State licenses are issued by the Secretary.~~ All local licenses are issued by the city or county where the establishment for which the license is sought is located. The information required to be provided and the qualifications for a ~~State or~~ local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a ~~State or~~ local license is mandatory if the applicant holds the corresponding ABC permit. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. -- All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. -- A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. -- ~~Neither the State nor a~~ A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article."

Section 17. G.S. 105-113.72 is repealed.

Section 18. G.S. 105-113.74 is repealed.

Section 19. G.S. 105-113.75 is repealed.

Section 20. G.S. 105-113.76 is repealed.

Section 21. G.S. 105-113.79 reads as rewritten:

"**§ 105-113.79. City wholesaler license.**

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than ~~twenty-five percent (25%) of the annual tax for the equivalent State license as set by G.S. 105-113.74.~~ thirty-seven dollars and fifty cents ($37.50) for a city malt beverage wholesaler or a city wine wholesaler license."

Section 22. G.S. 105-113.80(a) reads as rewritten:

"(a) Beer. -- An excise tax of fifty-three and one hundred seventy-seven one thousandths cents (53.177¢) per gallon is levied on the sale of malt ~~beverages at the rate of:~~ beverages.

~~(1) Forty-eight and three hundred eighty-seven one thousandths cents (48.387¢) per gallon on malt beverages in barrels holding at least seven and three-fourths gallons; and~~

~~(2) Fifty-three and three hundred seventy-six one thousandths cents (53.376¢) per gallon on malt beverages in cans, bottles, barrels, or other containers holding less than seven and three-fourths gallons.~~"

Section 23. G.S. 105-113.83(c) reads as rewritten:

"(c) Railroad ~~Sales License.~~ Sales. -- ~~This section does not affect the duty of a holder of a State railroad sales license to remit excise taxes on alcoholic beverages sold by that licensee in this State, as provided in G.S. 105-113.76~~ Each person operating a railroad train in this State on which alcoholic beverages are sold must submit monthly reports of the amount of alcoholic beverages sold in this State and must remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report must be made on a form prescribed by the Secretary."

Section 24. G.S. 105-113.84 reads as rewritten:

"§ 105-113.84. Invoices; report of resident brewery, resident winery, or nonresident vendor.

(a) Invoice. -- ~~When a~~ A resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages to a North Carolina wholesaler or ~~importer,~~ importer ~~he~~ shall give that wholesaler or importer two copies of the sales ~~invoice. He~~ invoice and shall also file one copy with the Secretary. The invoice shall ~~state:~~ state all of the following:

(1) The name and address of the ~~licensee~~ permit holder making the sale or ~~delivery;~~ delivery.

(2) The name, address, and ~~license~~ permit number of the wholesaler or importer receiving the ~~beverages;~~ beverages.

(3) The kind of beverage sold or ~~delivered; and~~ delivered, including the number of cases.

(4) The exact quantities of beverages sold or delivered, specified by size and type of ~~container.~~ containers.

(5) The total gallons of malt beverages, the total liters of unfortified wine, and the total liters of fortified wine.

(b) Monthly Report. -- Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. ~~The report shall specify the size and type of containers sold.~~ The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered."

Section 25. G.S. 105-113.86 reads as rewritten:

"§ 105-113.86. Bonds.

(a) Wholesalers and Importers. -- ~~Each holder of a malt beverage~~ A wholesaler ~~license, a wine wholesaler license, or an~~ or importer ~~license~~ shall furnish a bond in an amount of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ~~($50,000) to cover his tax liability.~~ ($50,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. The Secretary shall proportion the bond amount to the anticipated tax

liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. -- The Secretary may require the holder of a nonresident vendor ~~license~~ ABC permit to furnish a bond in an amount not to exceed two thousand dollars ($2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State."

Section 26. G.S. 105-113.89 reads as rewritten:

"**§ 105-113.89. Other applicable administrative provisions.**

The administrative provisions of Article 9 of this Chapter apply to this Article. ~~In addition, the following administrative provisions of Schedule B of this Chapter apply to the license taxes levied under this Article: G.S. 105-103, 105-104, 105-105, 105-108, 105-109, 105-110, and 105-112. In applying the provisions of Schedule B to this Article, the month "May" shall be substituted for the month "July."~~"

Section 27. G.S. 105-249 is repealed.

Section 28. G.S. 105-249.1 is repealed.

Section 29. G.S. 18B-902 reads as rewritten:

"**§ 18B-902. Application for permit; fees.**

(a) Form. -- An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. -- Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. -- Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(2) Off-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(3) On-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(4) Off-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(5) On-premises fortified wine permit -- ~~$200.00.~~ $400.00.

(6) Off-premises fortified wine permit -- ~~$200.00.~~ $400.00.

(7) Brown-bagging permit -- ~~$200.00,~~ $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be ~~$100.00.~~ $200.00.

(8) Special occasion permit -- ~~$200.00.~~ $400.00.

(9) Limited special occasion permit -- ~~$25.00.~~ $50.00.
(10) Mixed beverages permit -- ~~$750.00.~~ $1,000.
(11) Culinary permit -- ~~$100.00.~~ $200.00.
(12) Unfortified winery permit -- ~~$150.00.~~ $300.00.
(13) Fortified winery permit -- ~~$150.00.~~ $300.00.
(14) Limited winery permit -- ~~$150.00.~~ $300.00.
(15) Brewery permit -- ~~$150.00.~~ $300.00.
(16) Distillery permit -- ~~$150.00.~~ $300.00.
(17) Fuel alcohol permit -- ~~$50.00.~~ $100.00.
(18) Wine importer permit -- ~~$150.00.~~ $300.00.
(19) Wine wholesaler permit -- ~~$150.00.~~ $300.00.
(20) Malt beverage importer permit -- ~~$150.00.~~ $300.00.
(21) Malt beverage wholesaler permit -- ~~$150.00.~~ $300.00.
(22) Bottler permit -- ~~$150.00.~~ $300.00.
(23) Salesman permit -- ~~$25.00.~~ $100.00.
(24) Vendor representative permit -- ~~$25.00.~~ $50.00.
(25) Nonresident malt beverage vendor permit -- ~~$50.00.~~ $100.00.
(26) Nonresident wine vendor permit -- ~~$50.00.~~ $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- ~~$25.00.~~ $50.00.
(28) Winery special event permit -- ~~$100.00.~~ $200.00.
(29) Mixed beverages catering permit -- ~~$100.00.~~ $200.00.
(30) Guest room cabinet permit -- ~~$750.00.~~ $1,000.
(31) Liquor importer/bottler permit -- ~~$250.00.~~ $500.00.
(32) Cider and vinegar manufacturer permit -- ~~$100.00.~~ $200.00.
(33) Brew on premises permit -- ~~$200.00.~~ $400.00.

~~(c) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00).~~

(f) Fee Not Refundable. -- The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. -- All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

Section 30. G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be ~~five~~ seven hundred fifty dollars ~~($500.00).~~ ($750.00). A renewal fee shall not be refundable."

Section 31. Sections 1 through 13, 27, and 28 of this act become effective July 1, 1999. The remaining sections of this act become effective May 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1252

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

S1252 ALA-001 Page 1 of __

Date_____,1998

Comm. Sub. []
Amends Title []

moves to amend the bill on page 3, line 39, by rewriting the line to read:
"taxed ~~or specifically exempted in~~ under this Article, for which an admission is charged, shall";

and on page 5, line 16 by rewriting the line to read:
"~~etc.~~ Circuses and other traveling amusements.";

and on page 7, lines 21 and 25, by deleting the phrase "North Carolina".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF SENATE BILL 1252:
Simplify Privilege License Tax

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 2, 1998
SPONSOR: Senator Hoyle

Senate Bill 1252 is a recommendation of the Revenue Laws Study Committee and makes numerous changes to simplify and/or reduce the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. The Bill also increases ABC permit fees. The changes to the taxes and fees on alcoholic beverages would become effective May 1, 1999. All other changes would become effective July 1, 1999.

Amusements. The current law imposes an annual $50 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105. The license tax is due July 1 of each year and the tax on gross receipts is due monthly. Taxable forms of entertainment include athletic contests, sporting events, concerts, plays, musicals, night clubs, comedy clubs, amusement parks, carnivals, and festivals. Antique shows, craft shows, and auto shows, when a band is provided or a celebrity signs autographs, are also subject to the tax. Other taxable amusements are fashion shows, beauty pageants, air shows, mud slings, and tractor pulls. Current law also imposes a $50 privilege license tax and gross receipts tax on amusements such as a circus, menagerie, wild west show, a dog and/or pony show, or any other similar amusement not taxed in Article 2. The privilege tax on these amusements is assessed for each day or part of a day that the circus or similar amusement is held. Exempt amusements set out in Article 2 are high school and elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

The State privilege license tax on amusements is treated as an advance payment of the corresponding gross receipts tax, and the license tax is applied as a credit upon the gross receipts tax. Sections 4 and 5 of the Bill repeal the State privilege license taxes on amusements. This repeal would simplify the taxes assessed on amusements and would be revenue neutral since the license tax is a credit upon the gross receipts tax. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax.

Section 6 reorganizes the exemptions for certain amusements, so that a list of all exempt amusements will appear in one place in the statutes. The list includes those amusements that are currently exempted in Article 2, amusements that are listed as exempt in other sections of the statutes, and amusements that are described in other sections of the statutes and that are not currently taxed.

Professionals. G.S. 105-41 imposes a statewide privilege license on persons practicing certain professions or engaging in certain businesses. Section 7 of the Bill makes various clarifying and technical changes to the statute and reorganizes existing exemptions found throughout the statutes so that all exemptions will appear in G.S. 105-41. Currently the statute exempts persons age 75 and over and certain persons practicing the professional art of healing. The Bill adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons is currently set out in another section of Chapter 105, which this bill repeals. Section 8 of the Bill moves from Chapter 105 to Chapter 93B, Occupational Licensing Boards, a provision that exempts any person serving in the armed forces or in the merchant marine from paying license fees to a licensing board or commission or to the State. This exemption belongs in the Occupational Licensing Chapter because it relates to occupational licensing, not to taxes.

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the execution of these instruments, a lien is reserved or taken on personal property located in the State to secure the payment of the obligations. These dealers pay an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations within the preceding quarterly calendar months. Section 9 repeals the $100 license tax. Dealers will continue to pay the quarterly tax.

Banks. Under current law, banks are issued a privilege license each year and pay a tax at the rate of $30 for each $1,000,000 or fractional part of total assets held. These assets are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. Section 10 eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July 1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's current computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks. The Bill also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required

instead to pay a tax on the average of the total assets determined by the number of days in operation.

Alcoholic Beverages. Senate Bill 1252 repeals annual privilege licenses on ABC permittees, raises the ABC permit fees by the corresponding amount, and simplifies the tax rate on malt beverages. In order to engage in a business involving alcoholic beverages, a person must obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue. The person must obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license is mandatory if the applicant has the corresponding ABC permit. The information and qualifications required for the annual State license are the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license serves no purpose other than to raise revenue. The Bill repeals these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses would be offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

Senate Bill 1252 also simplifies the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Currently, an excise tax of 48.387 cents per gallon is assessed against malt beverages in barrels holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon is assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The Bill imposes an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the Bill simplifies the filing and reporting requirements for malt beverages, unfortified wine, and fortified wine by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. This information will now be shown on the invoice.

Other changes. Sections 1, 2, 3, and 5 of the Bill make conforming changes throughout Article 2 to clarify that the Article now deals more with privilege taxes, such as a tax on a business' gross receipts, rather than with license taxes. The only State license taxes that will remain in Article 2 if this Bill is enacted are attorneys-at-law and other professionals ($50.00) (G.S. 105-41) and loan agencies or brokers ($750.00) (G.S. 105-88). These sections of the Bill also eliminate the half-rate license tax for professionals and loan agencies that begin business more than halfway through the year.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1252 (First Edition)

SHORT TITLE: Simplify Privilege License Tax

SPONSOR(S): Senators Hoyle, Cochrane, Kerr, and Hartsell

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
No Half Year License		$14,375	$14,375	$14,375	$14,375
Amusements		**No Impact**			
Banks		1,400	1,400	1,400	1,400
Installment Paper Dealers		(123,800)	(123,800)	(123,800)	(123,800)
ABC Licenses & Permits		**Revenue Neutral**			
Beer Excise Tax		**Revenue Neutral**			
Net Change - G.F. Revenue		**($108,025)**	**($108,025)**	**($108,025)**	**($108,025)**
EXPENDITURES					
General Fund (savings)		**$68,877**	**$71,042**	**$73,346**	**$75,799**
Net Fiscal Impact - GF		**($39,148)**	**($36,983)**	**($34,679)**	**($32,226)**

POSITIONS: Abolish 3 clerical positions in the Department of Revenue beginning FY 99-00.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Alcoholic Beverage Commission

EFFECTIVE DATE: Sections 1 through 13, 27, and 28 (privilege licenses) become effective July 1, 1999 and remaining sections (ABC licenses and permits) become effective May 1, 1999.

BILL SUMMARY: The act repeals the state privilege license taxes for amusements, installment paper dealers, and alcoholic beverages. It changes the privilege tax on new banks and eliminates the proration of license fees for loan agencies and professionals. It creates a uniform malt beverage tax, raises the fee on ABC permits, and simplifies the filing and reporting requirements for alcoholic beverages.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Part (c) of section 2 of the bill ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. Upon passage of this bill, only professionals and loan agencies remain subject to annual license fees. Except for accountants, the Department of Revenue does not have data on the number of licenses that were paid for half year. 675 accountants paid $25 for a half year license in FY 1996-97and 472 bought a half year license in FY 1995-96. Averaging the two years, this note assumes 575 accountants needing a partial year license will pay the full $50 in FY 1999-00. **This will generate a gain to the General Fund of $14,375.**

Sections 4 & 5

In FY 1996-97, there were 323 privilege licenses issued to amusements, circuses, dances, and rodeos generating $17,737 in General Fund income. For this group the license fee serves as advance payment toward the 3% gross receipts tax collected on their performances. Except for the small amount of interest that the Department may earn on license revenue, **there is no fiscal impact from eliminating the annual license fee.**

Section 9

Section 9 eliminates the $100 license fee for installment paper dealers who engage in the business of "dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt". These dealers also pay a tax of .275% of the face value of the financial instruments they handle. Unlike the amusements license, the $100 paid by installment paper dealers is not an advance payment for the tax they pay. **Based on FY 1996-97 collections, this bill will produce a loss of $123,800 annually beginning in FY 1999-00.**

Section 10

Banks pay an annual privilege tax equal to $30 for each million dollars of assets they hold. However, a new bank pays a $100 privilege tax until it has been in operation for a year. This $100 fee is eliminated in section 10 and replaced with a requirement for new banks to pay the regular tax prorated by the number of days it operated during the fiscal year.

According to Ray Grace of the North Carolina Banking Commission, the establishment of new banks is cyclical and influenced both by the economy and by actions of the mega-banks. There were no new banks in 1993 and 1994. There were 2 in 1995 and 3 in 1996. In 1997, there were 10 new banks plus the conversion of a thrift to a bank. Mr. Grace anticipates 6 new banks in 1998.

This note assumes three new banks are established each year and uses FY 1996-97 as a model.

The chart below shows the date each bank was chartered by the Banking Commission in 1996 and the average assets for the three banks in the four quarters of 1996-97. Under this bill, instead of paying $100 in their first year, the banks would pay $30 for each million dollars in assets with an adjustment for the number of days in operation. For example, Bank A would pay $30 x 13.239 ($13,239,250/$1,000,000) x (344 days/365 days) = $374.13

	Established	Avg. Assets	Est. Tax	Current Tax	
Bank A	7/22/96	$13,239,250	$374.13	$100	
Bank B	11/18/96	$30,036,333	$555.06	$100	
Bank C	7/31/96	$28,317,750	$779.00	$100	
			$1,708.19	$300	Difference = $1,408.19

In summary, this note assumes additional revenue of $1,400 per year due to the change in section 10.

Sections 14 - 30

Under current law, a business that sells beer, wine, and/or spirituous liquor is required to secure the appropriate permits from the State Alcoholic Beverage Commission (ABC) and the appropriate commercial and retail licenses from the Department of Revenue. Sections 17 & 18 repeal the Department of Revenue's annual commercial and retail licensing requirements. New businesses filing permit applications with the ABC will no longer have to file a license application with the Department of Revenue. The Department collected an estimated $3.1 million from 40,000 licensees in FY 1996-97. This note assumes the revenue from ABC licenses in FY 1998-99 and beyond would have been $3.3 million per year. To offset this loss, ABC permit fees are increased in sections 29 and 30 of the bill. Using 1996-97 data on the number of ABC permits issued, the ABC worked with the Fiscal Research Division of the General Assembly to propose increased permit fees that would make the repeal of the retail licenses revenue neutral.

Since ABC permits are business specific (malt beverage, fortified wine, etc.), some businesses may be required to hold more than one permit. All ABC permits are continuing except for the brown bagging and the special occasions permits. This means as long as the permittee meets the qualifications of a permit, the permit does not have to be renewed annually. Under the proposed act, all businesses that currently hold licenses and permits prior to May 1, 1999 will not be affected by this act as long as they continue to meet the qualifications of their ABC permit. If an existing business fails to qualify, then they will have to reapply for new ABC permits and pay the higher fees.

By eliminating the processing of 40,000 ABC licenses each year, the Department of Revenue estimates that it could reduce its clerical staff by up to three Grade 57 clerical employees in the Business License & Returns Section of the Office Examination Division. The savings from these positions is $68,877 in FY 1999-00. This amount is adjusted for future growth in wages and fringe benefits.

Section 22

The excise tax rates on beer are combined into a single rate in section 22. Beer sold in barrels is currently taxed at 48.387 cents per gallon and beer sold in bottles and cans is currently taxed at 53.376 cents per gallon. The combined rate of 53.177 cents per gallon preserves the General Fund revenue expected to be collected from both rates. Although the proposal is revenue neutral, those selling beer in bottles and cans will pay a little less tax and those selling beer in barrels will pay a little more. For example, in 1996-97 producers of beer in bottles and cans would have paid $302,252 less in excise tax while producers of beer by the barrel would have paid $302,252 more in excise tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic & Warren Plonk
APPROVED BY:

DATE: June 1, 1998

VISITOR REGISTRATION SHEET

SENATE FINANCE — June 3, 1998

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Holcomb	HAHT Software
Janis Ramquist	NC DHA
David Renii	News & Observer
Stephenie Gibbs	Charlotte Observer.
Ashleigh Seiba	Charlotte Observer
Jonathan Morgan	NC Institute of Min. Economic Dev.
Hallee Hogan	PQLC Greensboro
~~Tamara Hedgepeth~~	~~Office of the GOV.~~
Debra Lurvin	Department of Revenue
Billy Daniel	DOR
Dana Alderman	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE — June 3, 1998

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patti Seawell	DOR
Angela Athie	DOR
Jay Hare	DOR
Nancy Pomeranz	DOR
Charles Hawks	DOR
Sabra Faires	DOR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, June 04, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

S.B. **1222** Meck Neck.

Draft Number:	PCS1990
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1239** Expand Qualified Business Tax Credit

Draft Number:	PCS1992
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1241** Amendments to the Revenue Laws.

Draft Number:	PCS8838
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comment: June 3 meeting

AGENDA

SENATE FINANCE COMMITTEE MEETING

Tuesday, June 9, 1998

12 NOON - ROOM 544

SB 1103 - Franklin Annexation - Carpenter and Jenkins

SB 1203 - Charlotte Stormwater Fees - Winner

SB 1293 - Modify Mecklenburg Tax Penalty - Rucho

SB 1312 - Certain Counties School Acquisition - Allran

SB 1397 - Durham County Stormwater Fees - Gulley and Lucas

SB 1399 - City of Durham/Stormwater Fees - Gulley and Lucas

SB 1410 - Chadburn Annexation - Soles

SB 1478 - Forsyth County Investments - Horton

SB 1479 - Winston-Salem Investments - Horton

SB 1514 - Hemby Bridge Incorporated - Plyler

SB 1226 - Technical Bill - Cochrane

SB 1289 - COPS for Transit Authorities - Gulley

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 9, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, June 9, 1998, at 12 noon in Room 544 with Senator Kerr presiding. There were 23 committee members present. Kevin Cochran from Raleigh, sponsored by Senator Plyler, and Ned Irons from Charlotte, sponsored by Senator Winner, were introduced as the pages for the meeting.

SB 1103 - Franklin Annexation.

Senator Carpenter was recognized to explain this bill and at the conclusion of his explanation, Senator Wellons moved for a Favorable Report and the motion was passed by the committee. Copy of Bill and supporting documents included in the minutes.

SB 1137 - Wesley Chapel Incorporated.

Senator Plyler explained this bill and Senator Rand offered a technical amendment which was adopted by the committee on his motion. The bill was given a Favorable Report, as amended, on motion by Senator Gulley. Copy of original Bill, Amendment, and new Committee Substitute included in the minutes.

SB 1203 - Charlotte Stormwater Fees.

Senator Winner explained her bill and on motion by Senator McDaniel, the bill was given a Favorable Report by the committee. Copy of Bill included in the minutes.

SB 1289 - COPS for Transit Authority.

Senator Gulley was recognized to explain his bill. On his motion, the committee adopted a Committee Substitute for discussion. After general discussion on the committee sub, on motion by Senator Dannelly, the committee sub was given a Favorable Report by the committee. Copy of original Bill, Committee Sub and explanation included in the minutes.

SB 1397 - Durham County Stormwater Fees.

This bill was explained by Senator Gulley and on motion by Senator Lee was given a Favorable Report by the committee. Copy of Bill included in the minutes.

SB 1399 - City of Durham/Stormwater Fees.

Senator Gulley explained this bill and at the conclusion of his explanation, Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

SB 1312 - Certain Counties School Acquisition.

Senator Allran was recognized to explain his bill. Senator Lee offered a technical amendment to the bill which was adopted by the committee on his motion. After general discussion of this bill, upon motion by Senator Ballantine, the committee gave SB 1312 a Favorable Report, as amended, and the bill will be rolled into a Committee Substitute to be reported out. Copy of original Bill and Committee Sub. included in the minutes. (Copy of Amendment, which added counties to the bill, not available.)

SB 1479 - Winston-Salem Investments.

Senator Horton explained his bill and Senator Dannelly moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

SB 1226 - Technical Bill.

This technical bill to make conforming changes to the Revenue Laws was explained by staff. Senator Cochrane sent forth an amendment which was adopted by the committee on her motion. On motion approved by the committee, a proposed committee substitute was adopted for discussion. After a brief discussion, Chairman Kerr announced that a new committee sub., included the amendment adopted, will be prepared and this bill will be further discussed at the Finance meeting tomorrow. Copy of original Bill, Committee Sub., Amendment, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 1410 not heard in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1103

Short Title: Franklin Annexation. (Local)

Sponsors: Senators Carpenter and Jenkins. (By request)

Referred to: State Government, Local Government and Personnel.

May 13, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FRANKLIN.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Franklin:

BEGINNING at a point on the Existing Primary Corporate Limit, Town of Franklin, N.C., said point also being on the western property line of parcel 2662 as shown on Macon County property map 6584.12; thence running from said point with said property line in a southern direction 160' to the southwestern property corner of said parcel 2662; thence running from said southwestern property corner with the southern property line of said parcel 2662 in a southeast direction 80' to a point in the western right-of-way of US Hwy. 23/441, said point also being the southeast property corner of said parcel 2662; thence running from said point with said western right-of-way in a southwest direction 400' to a point; thence leaving said western right-of-way line and continuing on the same course in a straight line 840' to a point where the straight line again intersects the western right-of-way line of said US Hwy. 23/441, said straight line also crossing US Hwy. 64, said point also being the northernmost corner of parcel 6840 and also being on the Existing Satellite Corporate Limit, Town of Franklin, N.C., as shown on Macon County property map 6584.16; thence running from said northernmost property corner with the western property line of said parcel 6840 and the Existing Satellite Corporate Limit, Town of Franklin, N.C., said line and said limit being one in the same, and running in a southwestern direction to a point in the western right-of-way of Dryman Road (SR 1156), said

point also being the southernmost property corner of said parcel 6840 as shown on Macon County property map 6584.15; thence running from said property corner with the same course 35' to a point in the center of Dryman Road (SR 1156); thence running with the center of Dryman Road (SR 1156) in a northeast direction 225' to a point, said center of Dryman Road (SR 1156) also being the Existing Satellite Corporate Limit, Town of Franklin, N.C.; thence continuing from said point in a southern direction 30' to a point in the eastern right-of-way of Dryman Road (SR 1156), said point also being the northwest property corner of parcel 6068 as shown on Macon County property map 6584.16; thence running from said northwest property corner with the western property line of said parcel 6068 in a southern direction to the southwest property corner, said western property line also being the Existing Satellite Corporate Limit, Town of Franklin, N.C., and said southwest property corner also being on the northern property line of parcel 6835; thence leaving the Existing Satellite Corporate Limit, Town of Franklin, N.C., and running from said southwest property corner with said northern property line in a northwest direction 45' to the northwest property corner of said parcel 6835; thence running from said northwest property corner with the western property line of parcels 6835 and 6623 in a southeast direction 495' to a property corner, said property corner being the northwest property corner of parcel 5495 as shown on Macon county property map 6584.20, said parcel 5495 also being the Existing Satellite Corporate Limit, Town of Franklin, N.C.; thence running from said northwest property corner with the western property line of said parcel 5495 in a southern direction 100' to the southwest property corner of said parcel 5495, said southwest property corner also being in the northern property line of parcel 5333; thence leaving the Existing Satellite Corporate Limit, Town of Franklin, N.C., and running with a portion of said northern property line and the western property line of said parcel 5333 in a southern direction 130' to the southwest property corner of said parcel 5333; thence running from said southwest property corner with the southern property line of parcels 5333 and 6303 in an easterly direction 130' to the southeast property corner of said parcel 6303, said southeast property corner being in the western right-of-way of Old Georgia Road (SR 1152); thence running from said southeast property corner with said western right-of-way in a southern, western and southern direction 1,000'$\pm$ to a point in the center of Cartoogechaye Creek; thence running from said point with the center of Cartoogechaye Creek in a southeast direction 800' downstream to a point, said point being the intersection of the center of Cartoogechaye Creek and the eastern right-of-way of US Highway 23/441, said point being shown on Macon County property map 6584.20; thence running from said point of intersection with the eastern right-of-way of US Hwy. 23/441 in a northeast direction 515' to a point, said point also being the southwest property corner of parcel 3201 as shown on Macon County property map 6584.20; thence running from said property corner with the southern property line of said parcel 3201 in a southeast direction to a point in the western right-of-way of Allman Drive (SR 1687); thence continuing on the same course 30' to a point in the center of Allman Drive (SR 1687); thence running from said point with the center of Allman Drive (SR 1687) in a northwest direction 975' $\pm$ to a point, said point being

the beginning of a portion of the Existing Satellite Corporate Limit, Franklin, N.C.; thence continuing with the center of Allman Drive (SR 1687) and the Existing Satellite Corporate Limit, Franklin, N.C., 675' ± to a point, said point being perpendicular to the southeast property corner of parcel 9087 as shown on Macon County property map 6584.16; thence leaving said Existing Satellite Corporate Limit, Franklin, N.C., and running from said point in a northern direction 30' to said southeast property corner of parcel 9087; thence running from said southeast property corner with the eastern property line of parcel 9087 in a northern direction 185' to the northeast property corner of parcel 9087; thence running from said northeast property corner with the northern property line of parcel 9087 in a western direction 170' to a property corner, said property corner also being in the eastern right-of-way of US Hwy. 23/441; thence running from said property corner with said eastern right-of-way in a northeast direction 470' to the southeast property corner of parcel 0657, said property corner also being in the northern right-of-way of Siler Road (SR 1660); thence running from said southeast corner with the eastern property line and the northern right-of-way of Siler Road (SR 1660), both being one and the same, and running in a northeast direction 180' to the eastern property corner of parcel 0657; thence running from said eastern property corner with the northern property line of parcel 0657 in a northwest direction 200' to a property corner in the eastern right-of-way of US Hwy. 23/441; thence running from said property corner with the said right-of-way of US Hwy. 23/441 in a northeast direction 50' to a point; thence running from said point and leaving said eastern right-of-way line and running a straight line in a northeast direction 1,300' ± to a point where the straight line again intersects the eastern right-of-way of said US Hwy. 23/441, said straight line also crossing US Hwy. 23/441/64, and said point also being shown on Macon County property map 6584.12; thence running from said point with the said eastern right-of-way of US Hwy. 23/441 in a northeast direction 440' ± to the Existing Primary Corporate Limit, Town of Franklin, N.C.; thence running with said Existing Primary Corporate Limit in a northwest direction to point of BEGINNING.

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

Town of Franklin
188 West Main Street
Franklin, North Carolina 28734
(704) 524-2516

RESOLUTION REQUESTING
ANNEXATION FOR THE TOWN OF FRANKLIN
BY SPECIAL ACT OF THE N.C. GENERAL ASSEMBLY

WHEREAS, the Town of Franklin provides the Town's municipal services to an area along US 441 and immediately south of the present primary corporate limits; and

WHEREAS, this area is fully developed with all lots developed for commercial and industrial purposes, and adjacent to satellite annexations conducted by the Town in recent years; and

WHEREAS, this area is accurately presented and described by a written description and accurately depicted on maps provided by the Town of Franklin; and

WHEREAS, the benefit of annexation of this area to the Town is to provide for the efficient delivery of municipal services to urbanized areas and provide for the orderly growth and development of the community; and

WHEREAS, this area does not qualify for annexation by the involuntary or standards and services method of annexation; and

WHEREAS, the North Carolina General Assembly may enlarge the boundaries of a municipality by a special act of the legislature.

NOW, THEREFORE, BE IT RESOLVED by the Board of Alderman of the Town of Franklin that The Town of Franklin hereby respectfully requests the General Assembly's assistance with this annexation by passing a special act to incorporate the area delineated in the attached written description and map into the corporate limits of the Town of Franklin, N.C.

Adopted this the 6th day of April, 1998.

Thomas B. Woodlee

Thomas B. Woodlee, Mayor

Attest:

Janet A. Anderson

Janet A. Anderson, Town Clerk

PROPERTY OWNERS TO BE ANNEXED

Bates Septic Systems
1559 Georgia Road
Franklin, NC 28734

Modern Globe Incorporated
P.O. Box 190
North Wilkesboro, NC 28659

Sheffield Backhoe
1439 Snow Hill Road
Franklin, NC 28734

Dairy Queen
c/o Nancy Jacobs Paris
2880 Old Murphy Rd.
Franklin, NC 28734

Carolina Pizza Company
c/o The Deland Company
P.O. Box 22845
Oklahoma City, OK 73123

X-Press Lube Center
35 Belden Circle
Franklin, NC 28734

B & E Grocery Incorporated
P.O. Box 1359
Franklin, NC 28734

Three Eagles Outfitters
78 Siler road
Franklin, NC 28734

Jenson Insurance
409 Georgia Road
Franklin, NC 28734

REQUEST FOR ANNEXATION BY SPECIAL ACT OF THE NORTH CAROLINA GENERAL ASSEMBLY

SUBMITTED BY THE TOWN OF FRANKLIN, NORTH CAROLINA

The North Carolina General Assembly may enlarge the boundaries of a municipality by a special act of the legislature. This method of annexation is especially useful in annexing territory that cannot be annexed under one of the general law procedures provided for municipalities in the N.C. General Statutes.

The Town of Franklin requests the General Assembly assist the Town by passing a special act to annex into the corporate limits of Franklin an area along highway U.S. 441 South and immediately south of the present primary corporate limits of the Town. This area is described by an attached written description and shown on an attached map. This area is adjacent to the Town and is completely developed. There are a total number of nine lots in this area. All these lots are developed for commercial and industrial purposes. These lots are adjacent to or in close proximity to satellite annexations conducted by the Town in recent years.

This area does not qualify for annexation by the involuntary or standards and services method of annexation provided to municipalities in G.S. 160A-36. Specifically, the area cannot meet the required one-eighth contiguity requirement, i.e., at least one-eighth of the aggregate external boundaries of the area must coincide with the existing primary corporate limit. Also, large tracts of undeveloped property contiguous to the existing primary corporate boundary prohibit involuntary annexation. Therefore, the Town respectfully requests the General Assembly's assistance with this annexation.

The proposed annexation area is currently provided with Town of Franklin municipal services. Town of Franklin water and sewer services are currently available to all these lots. The Town Police and Fire services are currently available to this area. Routine patrol of the areas contained in the satellite annexation areas requires officers to pass by most of these unincorporated lots. The only municipal services not provided to these lots at this time is municipal garbage collection services and street lighting.

The described area is urban in character, fully developed, adjacent to the Town and currently receives most of the Town's municipal services. The benefit of annexation of this area to the Town is to provide for the efficient delivery of municipal services to urbanized areas and provide for orderly growth and development of the community. The benefit to the property owners will be the opportunity to receive complete municipal services for a modest increase in property taxes. This increase in property taxes will be off set to some degree by a reduction in water and sewer rates for inside corporate customers. Presently, outside city customers pay a higher rate for water and sewer services.

JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS

REPORT TO THE GENERAL ASSEMBLY OF NORTH CAROLINA

Proposed Village of Wesley Chapel

May 20, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1137

Short Title: Wesley Chapel Incorporated. (Local)

Sponsors: Senators Plyler, Purcell, and Gulley.

Referred to: Rules and Operations of the Senate.

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Wesley Chapel is enacted as follows:

"CHARTER OF VILLAGE OF WESLEY CHAPEL.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Wesley Chapel, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Wesley Chapel.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the East Fork Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine Road in an easterly direction to the intersection of the extension of the centerline of

Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwesterly with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048 approximately 853 feet to a point being the southeastern property boundary line of

parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of Village of Wesley Chapel is the Village Council, which has four members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Al Black is appointed Mayor, and Allen Callahan, Mike Hafey, Ron Lawrence, and Beverly Williams are appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the two candidates receiving the highest numbers of votes are elected to a four-year term, and the two candidates receiving the next highest number of votes are elected to two-year terms. In 2001 and each two years thereafter, two members are elected for a four-year term.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Village to Operate under Mayor-Council Plan.** The Village of Wesley Chapel operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in Village of Wesley Chapel shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Village may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Village may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1137
Proposed Committee Substitute S1137-PCS6839

Short Title: Wesley Chapel Incorporated. (Local)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Wesley Chapel is enacted as follows:

"CHARTER OF VILLAGE OF WESLEY CHAPEL.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Wesley Chapel, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Wesley Chapel.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the East Fork Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine

Road in an easterly direction to the intersection of the extension of the centerline of Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwesterly with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048

approximately 853 feet to a point being the southeastern property boundary line of parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING. Excluded from this description are Tracts IV, V, and VI annexed to the Town of Indian Trail under Part 4 of Article 4A of Chapter 160A of the General Statutes by Annexation Ordinance 40 adopted May 25, 1998, more particularly described as follows:

TRACT IV:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road) (the right-of-way for each road being 60 feet wide), and running from said beginning point with the center of the right-of-way of S.R. 1377 as follows: (1) N 44-22-25 E 148.77 feet to a point; (2) N 40-39-45 E 528.84 feet to a point, a corner of Lot 8 of Houston Farm Subdivision, Phase III (Plat Cabinet B, File 306-A, Union County Registry); thence with the southwestern boundary of Lot 8 of said subdivision, South 35-01-09 E 231.18 feet to a point, a corner of Lot 9 of Houston Farm Subdivision, Phase III; thence with southwest boundary of Lot 9 of said subdivision, S 34-51-04 E 249.94 feet to a point in the center of the right-of-way of S.R. 1162; thence with the center of the right-of-way of S.R. 1162 as follows: (1) S 82-52-40 W 134.60 feet to a point; (2) S 80-44-44 W 558.83 feet to a point; (3) S 80-32-27 W 39.54 feet to the point of BEGINNING, and containing 3.54 acres, more or less, as shown on copy of map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated October 27, 1986, and recorded in Plat Cabinet B, at Page 306-A, Union County Registry.

TRACT V:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects with the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road), and running from said beginning point with the centerline of the right-of-way of S.R. 1162 as follows: (1) S 80-32-25 W 320.00 feet to a point; (2) S 80-33-44 W 591.51 feet to a point; (3) S 75-37-55 W 89.30 feet to a point; (4) S 47-08-50 W 60.77 feet to a point; (5) S 11-11-50 W 64.16 feet to a point near the center of the intersection of S.R. 1162 and S.R. 1355; thence N 15-46-08 W 35.86 feet to a point within the right-of-way of S.R. 1162; thence N 32-02-38 W 181.80 feet to a point in the center of the right-of-way of S.R. 1355; thence with the center of the right-of-way of S.R. 1355 as follows: (1) N 29-11-30 W 293.99 feet to a point; (2) N 32-02-58 W 431.58 feet to a point; (3) N 32-38-20 W 364.15 feet to a point in the center of said road right-of-way; thence N 45-02-45 E 3329.74 feet to a point in the southwestern boundary of the right-of-way of S.R. 1354 (known as Hawfield Road); thence within the right-of-way of S.R. 1354 (but not the centerline thereof), S 36-43-29 E 1656.35 feet to the point where the centerline of S.R. 1354 intersects the centerline of the right-of-way of S.R. 1377; thence with the center of the right-of-way of S.R. 1377 as follows: (1) S 51-43-45 W 98.35 feet to a point; (2) S 47-36-55 W 68.82 feet to a point; (3) S 41-39-39 W 102.57 feet to a point; (4) S 38-38-51 W 105.59 feet to a point; (5) S 38-07-38 W 270.65 feet to a point; (6) S 39-00-58 W 103.56 feet to a point; (7) S 40-22-09 W 110.27 feet to a point; (8) S 40-39-45 W 1471.25 feet to a point; (9) S 44-22-25 W 148.77 feet to the point of BEGINNING, and containing 129.06 acres, more or less, as shown on copy of unrecorded map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated March 6, 1986.

TRACT VI:

Beginning at a point in the centerline of Goldmine Road (S.R. 1162) the common corner of Lot #12 and #11 of Houston Farms, Phase I as shown on plat recorded in Plat Cabinet A, File 101-A, Union County Registry. Thence with the centerline of

said road as follows: 1st N12-56-05W 122.27', 2nd N13-03-20W 105.36', 3rd N07-14-55W 76.96', 4th N11-11-50W 64.16', 5th N47-08-50W 60.77', 6th N76-37-55E 80.30', 7th N80-33-40E 419.44' to a point in the centerline of said road, the common corner of Lot #11 and #10, thence S33-44-00W 358.84' to an iron stake the common corner of Lot #10, #11, #12, thence S53-00-00W 366.35' to the point and place of BEGINNING, being all of Lot #11 and containing 3.34 acres.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of Village of Wesley Chapel is the Village Council, which has four members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Al Black is appointed Mayor, and Allen Callahan, Mike Hafey, Ron Lawrence, and Beverly Williams are appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the two candidates receiving the highest numbers of votes are elected to a four-year term, and the two candidates receiving the next highest number of votes are elected to two-year terms. In 2001 and each two years thereafter, two members are elected for a four-year term.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Village to Operate under Mayor-Council Plan.** The Village of Wesley Chapel operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in Village of Wesley Chapel shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Village may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par

or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Village may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1137

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

S1137-ALB-1A

Date_____,1998

Comm. Sub. []
Amends Title []

1 moves to amend the bill on page 3, line 38,
2 by adding the following at the end of the line:
3 "Excluded from this description are Tracts IV, V, and VI annexed to
4 the Town of Indian Trail under Part 4 of Article 4A of Chapter 160A
5 of the General Statutes by Annexation Ordinance 40 adopted May 25,
6 1998, more particularly described as follows:

TRACT IV:

BEGINNING at a point where the center line of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects the center line of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road) (the right-of-way for each road being 60 feet wide), and running from said beginning point with the center of the right-of-way of S.R. 1377 as follows: (1) N 44-22-25 E 148.77 feet to a point; (2) N 40-39-45 E 528.84 feet to a point, a corner of Lot 8 of Houston Farm Subdivision, Phase III (Plat Cabinet B, File 306-A, Union County Registry); thence with the southwestern boundary of Lot 8 of said subdivision, South 35-01-09 E 231.18 feet to a point, a corner of Lot 9 of Houston Farm Subdivision, Phase III; thence with the southwest boundary of Lot 9 of said subdivision, S 34-51-04 E 249.94 feet to a point in the center of the right-of-way of S.R. 1162; thence with the center of the right-of-way of S.R. 1162 as follows: (1) S 82-52-40 W 134.60 feet to a point; (2) S 80-44-44 W 558.83 feet to a point; (3) S 80-32-27 W 39.54 feet to the point of BEGINNING, and containing 3.54 acres, more or less, as shown on copy of map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated October 27, 1986, and recorded in Plat Cabinet B, at Page 306-A, Union County Registry.

~~AND~~ Tract V

BEGINNING at a point where the center line of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects with the center line of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road), and running from said beginning point with the center line of the right-of-way of S.R. 1162 as follows: (1) S 80 32 25 W 320.00 feet to a point; (2) S 80 33 44 W 591.51 feet to a point; (3) S 75 37 55 W 89.30 feet to a point; (4) S 47-08-50 W 60.77 feet to a point; (5) S 11-11-50 W 64.16 feet to a point near the center of the intersection of S.R. 1162 and

S.R. 1355; thence N 15-46-08 W 35.86 feet to a point within the right-of-way of S.R. 1162; thence N 32-02-38 W 181.80 feet to a point in the center of the right-of-way of S.R. 1355; thence with the center of the right-of-way of S.R. 1355 as follows: (1) N 29-11-30 W 293.99 feet to a point; (2) N 32-02-58 W 431.58 feet to a point; (3) N 32-38-20 W 364.15 feet to a point in the center of said road right-of-way; thence N 45-02-45 E 3329.74 feet to a point in the southwestern boundary of the right-of-way of S.R. 1354 (known as Hawfield Road); thence within the right-of-way of S.R. 1354 (but not the center line thereof), S 36-43-29 E 1656.35 feet to the point where the center line of S.R. 1354 intersects the center line of the right-of-way of S.R. 1377; thence with the center of the right-of-way of S.R. 1377 as follows: (1) S 51-43-45 W 98.35 feet to a point; (2) S 47-36-55 W 68.82 feet to a point; (3) S 41-39-39 W 102.57 feet to a point; (4) S 38-38-51 W 105.59 feet to a point; (5) S 38-07-38 W 270.65 feet to a point; (6) S 39-00-58 W 103.56 feet to a point; (7) S 40-22-09 W 110.27 feet to a point; (8) S 40-39-45 W 1471.25 feet to a point; (9) S 44-22-25 W 148.77 feet to the point of BEGINNING, and containing 129.06 acres, more or less, as shown on copy of unrecorded map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated March 6, 1986.

TRACT VI

Beginning a point in the centerline of Goldmine Road (S.R.1162) the common corner of Lot #12 and #11 of Houston Farms, Phase I as shown on plat recorded in Plat Cabinet A, File 101-A, Union County Registry. Thence with the centerline of said road as follows: 1st N12-56-05W 122.27', 2nd N13-03-20W 105.36', 3rd N07-14-55W 76.96', 4th N11-11-50W 64.16', 5th N47-08-50W 60.77, 6th N76-37-55E 80.30', 7th N80-33-40E 419.44' to a point in the centerline of said road, the common corner of Lot #11 and #10, thence S33-44-00W 358.84' to an iron stake the common corner of Lot #10,#11,#12, thence S53-00-00W 366.35' to the point and place of BEGINNING, being all of Lot #11 and containing 3.34 acres.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1137

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

S1137-ALB-1A

1

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1203

Short Title: Charlotte Stormwater Fees. (Local)

Sponsors: Senators Winner; Dannelly and Odom.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO CONTINUE TO LEVY STORMWATER FEES IF REVENUE BONDS HAVE BEEN ISSUED AND ARE OUTSTANDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-314 reads as rewritten:

"**§ 160A-314. Authority to fix and enforce rates.**

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics

of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a ~~county.~~ county, except that a unit of local government that has issued revenue bonds, including revenue bonds issued to refund prior revenue bonds, for which stormwater utility fees have been pledged under Article 5 of Chapter 159 of the General Statutes may continue to levy a stormwater utility fee under this subsection for the sole purpose of (i) paying principal, interest, or redemption premiums in accordance with the terms of the revenue bonds, (ii) funding any reserve requirements or similar obligations imposed by any documents, instruments, or agreements pursuant to which the revenue bonds are authorized or issued or securing the same or any related credit facility, liquidity facility, derivative agreement, or any other similar agreement, and (iii) paying any related cost, fees, and expenses until the revenue bonds have been retired. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises

served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith."

Section 2. This act applies to the City of Charlotte only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1289*

Short Title: COPS for Transit Authorities. (Public)

Sponsors: Senators Gulley, Hartsell; and Reeves.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter."

Section 2. G.S. 160A-610 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 3. G.S. 160A-639 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1289*
Proposed Committee Substitute S1289-PCS3620

Short Title: Clarify Transit Authority Debt. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter."

Section 2. G.S. 160A-610 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 3. G.S. 160A-639 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

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

EXPLANATION OF SENATE BILL 1289(PCS):
Clarify Transit Authority Debt

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 9, 1998
SPONSOR: Senators Gulley, Hartsell; and Reeves

The proposed committee substitute for Senate Bill 1289 authorizes a regional public transportation authority or a regional transportation authority, created pursuant to Article 26 or Article 27 of Chapter 160A, to use installment purchase financing. The proposed committee substitute changes the short title and long title of the original bill to make clear that the bill is only clarifying the transportation authorities' power to use installment purchase financing. Under current law these authorities are already authorized to use equipment trust certificates, which are similar to installment purchase contracts. Installment purchase financing is a type of local government debt created when a local unit enters into an installment contract secured by a security interest in the property constructed or renovated. Certificates of participation may be issued as part of the installment purchase financing. A certificate of participation is a document setting out the share of the local unit's debt owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of general obligation bonds, however, installment purchase financing is not subject to the vote of the people.

This Bill applies to the Research Triangle Regional Public Transportation Authority and the Triad Regional Public Transportation Authority. The Triangle Regional Public Transportation Authority serves Wake, Durham, and Orange Counties. The creation of the Triad Regional Public Transportation Authority was authorized by the 1997 General Assembly. This Authority serves Forsyth, Guilford, Randolph, Davidson, and Alamance Counties. The four major cities involved in the creation of the Triad Authority are Greensboro, High Point, Winston-Salem, and Burlington.

The Bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1397*

Short Title: Durham County/Stormwater Fees. (Local)

Sponsors: Senators Gulley and Lucas.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COUNTY OF DURHAM TO ALLOW FEES FOR STORMWATER MAINTENANCE, REPAIR, AND IMPROVEMENTS TO BE PAID OVER TIME AND BECOME A LIEN ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-102 reads as rewritten:

"**§ 153A-102. Commissioners to fix fees.**

(a) The board of commissioners may fix the fees and commissions charged by county officers and employees for performing services or duties permitted or required by law. The board may not, however, fix fees in the General Court of Justice or modify the fees of the register of deeds prescribed by G.S. 161-10 or the fees of the board of elections prescribed by G.S. 163-107.

(b) Counties may by ordinance allow fees for stormwater maintenance, repairs, and improvements, with interest at a rate to be fixed by the board of commissioners, but not to exceed nine percent (9%) per annum. The fees with interest may be paid over a period of time to be fixed by the board of commissioners, but not to exceed 10 years.

(c) Counties may by ordinance provide that the fees for stormwater maintenance, repairs, and improvements shall become a lien on the real property. The lien may be collected in the same manner and using the same procedures that counties use to collect delinquent real property taxes. The lien shall be equal to liens of special assessments."

Section 2. This act applies to Durham County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1399*

Short Title: City of Durham/Stormwater Fees. (Local)

Sponsors: Senators Gulley; and Lucas.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF DURHAM TO PARTICIPATE IN THE COST OF STORM DRAINAGE IMPROVEMENTS ON PRIVATE PROPERTY AND TO ALLOW PRIVATE PARTIES TO PAY OVER TIME FOR THEIR PORTION OF THE COST OF THE IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding the following new section:

"Section 34. **Repairs to Stormwater System Located on Private Property.**

(a) The city is authorized to use funds collected from stormwater fees to participate in the cost of repairs, improvements, and maintenance to the stormwater system located on private property within the city, and to enact ordinances that allocate the private and public share of the cost of such activities. Upon written request by the property owner, the city is also authorized to allow the private share of the cost, with interest at a rate to be fixed by the city council but not to exceed nine percent (9%) per annum, to be paid over a period of time to be fixed by the city council but not to exceed 10 years. The unpaid portion owed to the city by the property owner shall become a lien on the real property, and may be collected in the same manner and using the same procedures by which the city collects delinquent personal or real property taxes. Any such lien shall be inferior to all prior and subsequent liens for federal, state, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

(b) The authority granted by this section is in addition to and not in derogation of any other authority granted to the city by this charter or any other law."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1312

Short Title: Certain Counties School Acquisition. (Local)

Sponsors: Senator Allran.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CATAWBA AND LINCOLN COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1312
Proposed Committee Substitute S1312-PCS6840

Short Title: Certain Counties School Acquisition. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CATAWBA, CUMBERLAND, DAVIDSON, DAVIE, DURHAM, HOKE, LINCOLN, ROBESON, AND WAYNE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

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

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Catawba, Cherokee, Chowan, Columbus, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, ~~Wilson, and Watauga~~ Watauga, Wayne, and Wilson Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1479

Short Title: Winston-Salem Investments. (Local)

Sponsors: Senators Horton; Cochrane and McDaniel.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT RELATING TO INVESTMENTS MADE BY THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

Section 1. The final paragraph of Section 5 of Chapter 296 of the Public-Local Laws of 1939, as amended by Chapter 721 of the Session Laws of 1959, Chapter 565 of the Session Laws of 1965, Chapter 397 of the Session Laws of 1969, Chapter 1026 of the Session Laws of 1989, and Chapter 951 of the 1991 Session Laws, reads as rewritten:

"The City of Winston-Salem, or any governing body, agency, insurance company, person or other corporation contracting with the City of Winston-Salem for the investment, care or administration of said fund may invest and reinvest the funds constituting the said fund in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2. Additionally, the City of Winston-Salem or any agency, insurance company, person or other corporation contracting with the City of Winston-Salem for the investment, care or administration of funds may invest and reinvest any of the City's employee benefits ~~funds and~~ funds, risk reserve ~~funds~~ funds, City of Winston-Salem Cemetery Perpetual Care Fund, and capital reserves, as designated from time to time by the Board of Aldermen, in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2."

Section 2. Section 1.1 of Chapter 951 of the 1991 Session Laws reads as rewritten:

"Sec. 1.1. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Winston-Salem Police Officers Retirement Fund, employee benefits ~~funds and~~ funds, risk reserve ~~funds~~ funds, City of Winston-Salem Cemetery Perpetual Care Fund, and capital reserves, as designated from time to time by the Board of Aldermen, of the City of Winston-Salem only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1226

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Senators Cochrane, Dalton, Kerr, Hartsell, Hoyle, Webster; and Carpenter.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.**

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1(f). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(g). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"**§ 105-131.6. Distributions.**

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S1226-PCSLA-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 1226
THIS IS A DRAFT 9-JUN-98 10:38:33
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of

Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1(f). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(g). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used

VISITOR REGISTRATION SHEET

SENATE FINANCE — Tuesday, June 9th

Name of Committee — **Date** 1998

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone Assoc -
Andy Romanet	N.C.L.M.
BILL SCOGGIN	NC BAR ASSOC
John Kuster	NCFPC
Alice Gaylord	Electricities
Gary Harris	NC Petroleum Marketers
[illegible]	NCPMA, Inc.
Boyd Cauble	City of Charlotte
Jim Ritch	TTA
[illegible]	A Transit Authority
[illegible]	NCFB

VISITOR REGISTRATION SHEET

SENATE FINANCE — Tuesday, June 9th

Name of Committee — **Date** 1998

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pomeranz	DOR
John Bailey	"
Charles Adler	"
Anna Pope	"
Pattie Seawell	"
Paul Stock	NC Bankers Assn.
Celeste Chilton	Sen. Cooper's Office
Julia Carpenter	NCUSA
Betty Daniel	DOR
DJ Haire	City Council Fayetteville
Irene Pumphrey	NCSOS

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, June 10, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1103** Franklin Annexation
Sequential Referral: None
Recommended Referral: None

S.B. **1203** Charlotte Stormwater Fees
Sequential Referral: None
Recommended Referral: None

S.B. **1397** Durham County/ Stormwater Fees
Sequential Referral: None
Recommended Referral: None

S.B. **1399** City of Durham/Stormwater Fees
Sequential Referral: None
Recommended Referral: None

S.B. **1478** Forsyth County Investments
Sequential Referral: None
Recommended Referral: None

S.B. **1479** Winston-Salem Investments
Sequential Referral: None
Recommended Referral: None

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

S.B. **1289** COPS for Transit Authorities
Draft Number: PCS3620
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1312** Certain Counties School Acquisition

Draft Number:	PCS6840
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comment: **CORRECTED REPORT** June 9

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, June 15, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

S.B. **1137** Wesley Chapel Incorporated

Draft Number:	PCS4690
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1166** Farmville Annexation

Draft Number:	PCSA865
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: June 11 SB 1137 1166

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1226 (First Edition)

SHORT TITLE: Revenue Laws Technical Changes

SPONSOR(S): Senators Cochrane, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund		($90,000)	($95,000)	($100,000)	($105,000)
Public School Building Capital Fund		$90,000	$95,000	$100,000	$105,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 1 becomes effective for taxable years beginning on or after January 1, 1999. The remainder of the bill is effective when it becomes law.

BILL SUMMARY: The bill makes technical and conforming changes to the revenue laws and related statutes.

ASSUMPTIONS AND METHODOLOGY: Except for Section 1, this bill has no revenue impact. Section 1 recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained.

Under G.S. 115C-546.1, a portion of the corporate income tax is earmarked for the Public School Capital Building Fund. Monies in the fund are distributed to counties on a per average daily membership basis to be used for public school capital outlay projects. Because Savings and Loans pay income tax under a separate Article, no part of their income tax goes to the Public School Building Capital Fund. When they begin to pay the identical tax under the general corporate income

tax, rather than a separate Article, part of their income tax that would otherwise go to the General Fund will go to the Public School Building Capital Fund.

The estimate for the first year cost of earmarking was provided by the Department of Revenue. A growth rate of 5% was used for future years.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: David Crotts
APPROVED BY:
DATE: June 8, 1998

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 10, 1998

AT 12:00 NOON - ROOM 544

Opening of Meeting - Senator Hoyle, Presiding

Introduction of Pages

Bills to be considered:

- S.B. 1226 - REVENUE LAWS TECHNICAL CHANGES - SEN. COCHRANE
- S.B. 1227 - UPDATE IRC REFERENCE/CONFORM GIFT TAX - SEN. KERR
- ~~S.B. 1252 - SIMPLIFY PRIVILEGE LICENSE TAX - SEN. HOYLE~~
- S.B. 1327 - NO TAX ON GAS CITIES - SEN. DALTON

Adjournment

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 10, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met at 12:00 Noon in Room 544 of the LOB on Wednesday, June 10, 1998. Senator John Kerr, Co-chairman, called the meeting to order. There were 23 members of the Committee present. Senator David Hoyle, Co-chairman, introduced the Pages, they were: Kevin Cochran from Raleigh, North Carolina, sponsored by Senator Aaron Plyer and Brandon Robinson from Mocksville, North Carolina, sponsored by Senator Betsy Cochrane.

SB 1226 - Revenue Laws Technical Changes

Senator Betsy Cochrane came to explain the bill. She moved to adopt the proposed committee substitute for discussion, motion passed. Dave Crotts from Fiscal Research explained the fiscal note on this bill. Senator Hugh Webster made a motion for a "favorable" report, motion passed. (Copy of the Proposed Committee Substitute to the Bill and explanation of the pcs included with the minutes).

SB 1327 - No Tax on Gas Cities

Senator Dalton came to speak on the bill as amended on June 2, 1998. Senator William Purcell sent forth amendment #2 to the bill and moved that amendment be adopted, motion passed. Cindy Avrette, Staff Counsel to the Committee, explained the amendment. Mr. Mark McNeilly with Libby Owens Ford spoke on the amendment to the bill. Mr. Glenn Jernigan representing N. C. Natural Gas Association spoke in support of the bill as amended. Mr. Andrew L. Romanet, Jr. representing the League of Municipalities, Inc. spoke on the bill. Mr. Jim Frank Henderson spoke in support of the amendment by Senator Purcell. Ms. Sharon C. Miller, representing Carolina Utility Customers Association, Inc., spoke. Ms. Sabre Faires with the Department of Revenue spoke in support of the legislation. Mr. Gray Styers representing Southeastern Gas & Power, Inc. spoke on the bill. Senator Mark McDaniel made a motion for a "favorable as amended" for the bill and be rolled into a committee substitute, motion passed. (Copy of Bill, Explanation, Copy of Amendment #1, Fiscal Note, Amendment #2, Explanation of Amendment #2, Support Information to Amendment #2 and Committee Substitute which includes Amendment #1 and #2 are included with minutes).

S. B. 1227 - Update IRC Reference/Conform Gift Tax

Senator John Kerr came to explain the bill. Senator David Hoyle spoke on the fiscal note to the bill. Senator Perdue spoke on the fiscal impact. Senator Alan Wellons made a motion for a "favorable " report on the Bill, motion passed. (Copy of Bill, Explanation and Fiscal Note included in the minutes).

S. B. 1252 - Simplify Privilege License Tax was not heard at this Meeting

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #2
Committee Report dated 6/10/98 is Attachment #3
Committee Report dated 6/11/98 is Attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

Senate Bill 1226
S1226-CSLA-6/9
PROPOSED COMMITTEE SUBSTITUTE
THIS IS A DRAFT 10-JUN-98 13:42:55
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of

EXPLANATION OF SENATE BILL 1226 (PCS):
Revenue Laws Technical Changes

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 9, 1998
SPONSOR: Senator Cochrane

Senate Bill 1226 is a recommendation of the Revenue Laws Study Committee and makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes The proposed changes that were added in the Proposed Committee Substitute are indicated in bold.

PART I. GENERAL TECHNICAL CHANGES

Section	Explanation
1	Recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained. **In addition, a general exemption in Article 8D has been transferred to the relevant privilege tax statutes: G.S. 105-83, G.S. 105-88, and G.S. 105-102.3.** This technical change has been reviewed and approved by the Bankers Association, which represents savings institutions.
2 - 3	Repeals obsolete provisions of the inheritance tax.
4	Conforms cross-reference to corporate tax credits to reflect that some credits are in other Articles of the Revenue Act.
5 - 8	Makes conforming changes to Subchapter S Corporation law to reflect the fact that trusts may now be shareholders.
9	Repeals an individual income tax definition for a term that is no longer used in the individual income tax law.
10	Adds cross-reference to two individual income tax credits that do not apply to estates and trusts.
11	Corrects grammar.
12 - 13	Clarifies that withholding is not required on payments to tax-exempt entities.
13.1	**Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in**

which a type of credit card will be used in lieu of food stamps or coupons.

14 Removes references to sales tax applying to two types of motor fuel for which motor fuel tax refunds are allowed, because refunds are not made on these types of motor fuel (accidental mixes and fuel sold to marinas).

14.1 Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in which a type of credit card will be used in lieu of food stamps or coupons.

15 Modifies the definition of interstate carrier for purposes of sales tax refunds to reflect the deregulation of the industry.

15.1 Makes a conforming change to reflect a change under the Equitable Distribution Laws that now provides for the distribution of marital property and divisible property.

16 Provides that a gift tax return is not required for gifts that are exempt from tax: gifts to charity and gifts between spouses. The 1997 federal tax act made a similar change to the federal gift tax, which formerly required returns for gifts to charity above $10,000.

17 Removes incorrect language describing the calculation of the gross premiums tax.

18 Clarifies insurance company tax exemption language. G.S. 105-228.10 was enacted in 1945 to provide that local governments may not levy additional taxes on insurers and other entities subject to the gross premiums tax. This section rewrites the statute to state that cities and counties are prohibited from levying a privilege license tax or a gross premiums tax on entities subject to gross premiums tax. The vague language of the statute is rewritten to clarify that insurance companies are not exempt from local sales taxes, local meals taxes, and other similar taxes that the General Assembly has authorized for local governments since this statute was enacted in 1945. Insurance companies currently pay these taxes and the terms of the tax statutes make it clear that they are not exempt.

19 Deletes an individual income tax exemption that is no longer needed because federal law exempts the same income and our law piggybacks the federal law.

20 Provides that tax information may be shared on a reciprocal basis with tax officials from jurisdictions outside the United States, as required by the International Fuel Tax Agreement.

21 Clarifies that taxpayers may rely upon directives published by the Department of Revenue to the same extent as provided under current law for bulletins published and rules adopted by the Department of Revenue.

22 - 24	Remove ambiguities in the use value property tax law that were created unintentionally when these statutes were rewritten and reorganized in 1995. The rewrite created potential, although strained, interpretations that deferred taxes were no longer required to be paid in some or in many cases where the law has always intended for them to be paid. These sections clarify that the law with respect to "rollback" of deferred taxes was not restricted by the 1995 rewrite. They also make further clarifying changes to the language.
25	Revises definition of public service company to reflect deregulation of carriers and to conform to Institute of Government interpretation that regulation requirement applies only to catch-all category of "any other company performing a public service."
26 - 27	Repeal two property tax provisions that have expired.
28	Clarifies that motor fuel sold to the federal government is exempt only if sold for use by the federal government.
29	Repeals a provision allowing refunds for motor fuel tax paid by marinas. Federal law no longer requires marinas to pay tax on motor fuel they purchase, so refunds are no longer necessary.
30	Corrects an incorrect cross-reference.
30.1	**Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in which a type of credit card will be used in lieu of food stamps or coupons.**
31 - 32	Deletes provisions that have expired.
33 - 35	Corrects incorrect term describing short-term rental vehicles.
36	Reenacts a law modifying historic rehabilitation tax credits. The law was not roll called. Although the law expands the credits, in certain instances it could postpone part of the tax benefit allowed under prior law.
37	Repeals an obsolete tax on consigned candy products.
38	Amends the Setoff Debt Collection Act to reflect the new names given to public assistance programs by the 1997 welfare reform legislation, and to remove excess verbiage that resulted from a redlining error.
39	Conforms the structure of the Revenue Laws Study Committee statute to fit the requirements of the General Assembly's new computer system, and corrects gender-specific language.
40	Repeals list of cross-references to Highway Bond Acts. The list is incomplete and serves no purpose.

PART II. CONFORM STATUTORY NOMENCLATURE

Section	Explanation

41 - 54	Change from "Division" to "Part" the name of the subdivisions within Articles of Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
55 - 67	Eliminate the term "Schedule" used as an additional name for Articles in Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
68 - 113	Change cross-references to "Divisions" and "Schedules" to "Parts" and "Articles," respectively.

PART III. EFFECTIVE DATE

Section	Explanation
114	Provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1226
Proposed Committee Substitute S1226-PCS3624

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.**

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1 (f). G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to corporations liable for the tax levied under G.S. ~~105-102.3.~~ 105-102.3 or to savings and loan associations."

Section 1(g). G.S. 105-88(b) reads as rewritten:

"(b) ~~Nothing in this section shall be construed to~~ This section does not apply to banks, industrial banks, trust companies, ~~building~~ savings and loan associations, ~~or~~ cooperative credit unions, ~~nor shall it apply to~~ the business of negotiating loans on real estate as described in G.S. 105-41, ~~nor to~~ pawnbrokers lending or advancing money on specific articles of personal property, ~~nor to~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. ~~It shall apply~~ This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of ~~such~~ the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect ~~same,~~ the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker ~~shall be~~ is required to obtain a privilege license under this section merely because ~~he advances his~~ the broker advances the broker's own funds and takes a security interest in real estate to secure ~~such~~ the advances and when, at the time of ~~such advance of his own funds, he~~ the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount ~~such~~ the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or when, at the time of the advance ~~of his own funds, he~~ the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of ~~said~~ the obligation and does sell the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or because ~~he advances his~~ the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE DRS8781-RBX34(5.15)

FILED - SENATE
S 1327
MAY 21 1998
PRINCIPAL CLERK (Public)

Short Title: No Tax on Gas Cities.

Sponsors: Senators Dalton and Phillips.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, AND TO LIMIT THE SERVICE AREA A MUNICIPALITY MAY SERVE WITH PIPED NATURAL GAS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 5E.

"Piped Natural Gas Tax.

"§ 105-187.40. Definitions.

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(4) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.027
Over 15,001	.022

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"**§ 105-187.42. Liability for the tax.**

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"**§ 105-187.43. Payment of the tax.**

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"**§ 105-187.44. Distribution of part of tax proceeds to cities.**

EXPLANATION OF SENATE BILL 1327:
No Tax on Gas Cities

TO: Senate Finance
FROM: Cindy Avrette, Committee Counsel
DATE: May 26, 1998
SPONSOR: Senator Walter Dalton and Senator Jim Phillips

Senate Bill 1327 preserves the tax-exempt status for piped natural gas sold by one of the eight municipalities that operate their own piped gas system. It also makes the taxes on other sales of piped natural gas more uniform and it limits the service area a gas city may serve with piped natural gas.

There are three types of sellers of piped natural gas: a utility company, a gas marketer, and a gas city. A utility company is a utility regulated by the Utilities Commission. A gas marketer is a person who sells piped natural gas but is not a regulated utility. Gas marketers use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service. Piped natural gas is increasingly sold by persons who are not utilities. A gas city is a city that operates its own piped gas system. Eight cities in the State do this and have since at least the 1950's. The eight gas cities are: Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Two taxes now apply to piped natural gas. The applicability and rate of the taxes varies depending upon both the identity of the seller and the identity of the consumer. One of these taxes is a gross receipts tax equal to 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The franchise tax applies only to the receipts of a regulated utility. The franchise tax on piped natural gas was enacted around 1925, when only regulated utilities could sell piped natural gas. Federal and state regulation of the piped natural gas industry has changed and now these regulations allow persons who are not utilities to sell piped natural gas. Therefore, gas marketers and gas cities, because they are not regulated utilities, are not subject to the franchise tax, except to the extent it is imposed on the transportation charges or embedded in the price paid on gas bought from a utility for resale to customers.

The second of these two taxes is the sales tax on piped gas. This tax is the result of a change made by the General Assembly in 1985. That year, the existing 6% utility franchise tax was split into a 3% sales tax and a 3.22% gross receipts tax to make the sales tax portion deductible by individuals on their federal income tax returns. Although the federal tax law changes in 1986 removed this deduction, North Carolina did not change its taxation of utilities.

For several years, the Department did not impose the general 4% State and 2% local sales and use tax rate to the sale of piped natural gas. However, under a directive recently issued by the Department of Revenue, the Department clarified that piped natural gas is tangible personal property as that term is defined in the sales and use tax statutes. Therefore, the retail sale of piped natural gas is subject to sales and use tax unless specifically exempted by statute.

The sale of piped gas by a gas city or by a gas marketer is not exempt from sales and use tax. Therefore, the retail sale of piped gas by these sellers is subject to a 6% State and local sales and use tax unless a lower rate applies. The law provides a lower rate of 3% for all sales made by regulated utilities and a lower rate of 2.83% for sales made to farmers, manufacturers, and laundries. Piped natural gas taxes at the State rate of 3% or 2.83% are not subject to the 2% local sales and use tax. If piped natural gas is purchased from a seller who is not required to collect North Carolina sales tax, then the purchaser is subject to a use tax on the purchase.

Prior to the Department's sales tax directive, the sales and use tax was not imposed on the sale of piped natural gas sold by gas cities and gas marketers. The changes made by the directive become effective July 1, 1998. This bill preserves the tax-exempt status for piped natural gas sold by gas cities. It also limits the area a gas city may serve to the area being served by it on June 30, 1998, and areas initially requiring piped natural gas service after that date if the area is located wholly within the county in which the gas city is located.

To correct the other inequities embedded in the bifurcated taxation of piped natural gas, the bill eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State. The uniform tax is an excise tax on the gas. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. A tax rate based upon the amount of gas consumed, versus the price paid for gas and the gross receipts derived from gas, should result in a more stable revenue stream. The price of gas varies from season to season and year to year.

A declining block tax rate is also used to preserve the current distribution of the tax burden between the three classes of piped gas customers. These three classes are residential, business, and industrial. The current taxes are a percentage of price. The rates for the three classes are also based on price; residential rates are the highest, business rates are in the middle, and industrial rates are the lowest. The current combination of rate and tax therefore results in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-8

Date_____,1998

Comm. Sub. []
Amends Title [YES]

Senator Dalton

moves to amend the bill on page 1, line 3, by deleting "MUNICIPALITIES," and substituting "MUNICIPALITIES AND";

and on page 1, lines 4 through 6, by inserting a period immediately after the word "UNIFORM" and by deleting the remainder of those lines;

and on page 1, lines 21 and 22, by inserting a new definition between those lines to read:

"(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.";

and on page 1, line 22, by deleting "(3)" and substituting "(4);

and on page 2, line 1, by deleting "(4)" and substituting "(5)";

and on page 2, lines 12 through 17, by rewriting those lines to read:

"each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.0470

201 to 15,000	.0270
Over 15,001	.0224";

and on page 3, lines 39 and 40, by striking through those lines;

and on page 14, line 38 through page 15, line 5, by deleting those lines;

and on page 15, line 6, by deleting "Section 15." and substituting "Section 14.";

and on page 15, line 10, by deleting "Section 16." and substituting "Section 15.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1327

SHORT TITLE: No Tax on Gas Cities

SPONSOR(S): Senators Dalton and Phillips

FISCAL IMPACT

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

(Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
State	(7.6)	(7.8)	(7.9)	(8.1)	(8.2)
Counties	(1.3)	(1.3)	(1.4)	(1.4)	(1.4)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Counties, and Municipalities.

EFFECTIVE DATE: July 1, 1998.

BILL SUMMARY: In the natural gas industry there are three types of sellers: utility companies, gas marketers, and cities that sell their own gas. Several types of taxes are now applied to piped natural gas, with the rates and type of tax charged determined by the type of seller and buyer. Utility companies are responsible for a sales tax of 3% (2.83% if the customer is a manufacturer) and a gross receipts tax of 3.22% on the commodity price. Under current law the utilities are the only group responsible for sales tax. Gas marketers are responsible for a gross receipts tax on the transportation charge (not the commodity price). However, if the gas is sold to a customer with direct access, no gross receipts tax is payable. Gas cities pay no sales tax and pay a gross receipts tax on only the gas they purchase for resale, from a North Carolina utility. A use tax should be paid by the customers of out of state gas marketers. All taxes are based on the price paid for the gas.

On May 5, 1998, the Department of Revenue issued a directive concerning the sale of piped natural gas. As a result of the directive piped natural gas will be defined as tangible personal property, and its retail sale will be subject to the 4% state and 2% sales and use tax, unless specifically exempt by statute. Sales of piped natural gas by the producer will continue to be

exempt from sales tax. The sale of piped gas by a city is not exempt, and is subject to either a 6% or 3% sales tax. A gas marketer is not exempt and would be responsible for the 6% rate. All gas sold to farmers, manufacturers, or laundries would be subject to a 2.83% tax. Utilities will only be responsible for a 3% sales tax rate, or 2.83% if the gas is sold to farmers, manufacturers, or laundries. The Department of Revenue directive becomes effective July 1, 1998.

This bill would restructure the taxes on natural gas. The bill eliminates the distinction between sales by utilities and sales by others, and applies a uniform tax to all piped natural gas consumed in North Carolina. The uniform tax is an excise tax. The rate is structured as a "declining block" that decreases as the amount of gas consumed in a month increases. The tax rate will be based on the amount of gas consumed, rather than the price paid for the gas. The bill would also exempt the gas cities from the new tax.

ASSUMPTIONS AND METHODOLOGY: Actual sales and gross receipts tax collections (related to piped natural gas) in 1997 were estimated to be $58.4 million by the Public Staff of the Utilities Commission. This number was then increased to reflect the 2% growth rate used in the economic model. An adjustment was made to convert the calendar year numbers to a fiscal year basis. An additional $2.7 million was added to the revenue estimate to reflect the expected sales tax income from taxing the gas cities, per the May 1998 Department of Revenue directive. $6.2 million was included as the estimated additional tax income from taxing gas marketers at 6% (2.83% if the customer is a manufacturer), per the May 1998 Department directive. Approximately 1.3 million of the revenue from taxing gas marketers would be forwarded to the counties as local sales tax. In total, this created a 1998-9 revenue estimate from piped natural gas, under the current system and including the Department of Revenue directive, of $69.1 million. Future years were forecasted based on a 2% growth rate.

Estimates for tax income under the bill were based on actual volumes delivered in 1997. The 1997 deliveries were grouped into "rate blocks" and increased to reflect the 2% growth rate used in the economic model. An adjustment was made to convert the calendar year numbers to a fiscal year basis. Future years were forecasted based on a 2% growth rate.

TECHNICAL CONSIDERATIONS: The estimated revenue associated with the Department directive was included in the baseline estimate of potential revenue without the bill. It should also be noted that natural gas prices are highly violable and very sensitive to changes in climate and market forces. As such, year to year variations in the revenue associated with natural gas taxes, under the current system, could vary dramatically.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps LSM
APPROVED BY: Tom Covington

DATE: May 26, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED William R. Purcell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF AMENDMENT:
S1327-ARBX-8

This amendment does four things:

- It changes the third rate category on page 2, line 17, to provide the State with the same amount of revenue under the bill that it anticipates receiving under the current franchise/sales tax structure. The targeted amount of revenue needed is $60 million. This amount is based on the law prior to the directive issued by the Department of Revenue.

- It provides that the tax is calculated on the total volume metered through two or more separate measuring devices if the devices are located on the same premises and are part of the same billing account. (Page 2, line 12) Many large industrial customers have more than one meter because, at the time the meters were installed, there was not a meter that could reliably gauge the large volumes of piped gas received. Although technology has improved and such a meter exist today, it would cost several million dollars to replace the multiple meters with one improved meter. It is the seller's responsibility to replace the meter. If the seller replaces the meter, the cost of doing so will be reflected in its rates. Rather than impose this burden on the seller, and ultimately the consumers, the amendment makes this technical change.

- It makes a technical change on page 3, lines 39 and 40. These lines are no longer needed because regional natural gas districts will not pay a franchise tax under the bill.

- It deletes Section 14, which sets forth the service area of gas cities. The statutes that currently govern the expansion of a gas city's service area will remain. G.S. 159-96 says that a city may not use revenue bonds to finance, in whole or in part, a natural gas distribution system that will serve users outside the corporate limits of the city if service is available or will be available within a reasonable time from a local distribution company. G.S. 160A-312 gives cities the authority to operate public utilities within their corporate limits and, within reasonable limitations, outside their corporate limits. Caselaw provides that certain factors may be considered when determining whether an extension of service is reasonable. As applied to electricity, those factors include the electric providers' current levels of service in the area in question, particularly in the immediate vicinity of the potential customer, and the present readiness, willingness, and ability of each to serve the potential customer.

SB 1327 - Proposed Gas Tax Rates

Rate Block (therms)	Estimated Deliveries (therms)	Rate per therm	Estimated Tax Receipts
Under 200	525,261,297	$0.0470	$24,687,281
201 to 15,000	347,356,476	$0.0350	12,157,477
15,001 to 60,000	267,537,478	$0.0240	6,420,899
60,001 to 500,000	716,606,231	$0.0200	14,332,125
500,001 and over	146,994,200	$0.0040	587,977
Total - SB 1327	2,003,755,682		$58,185,758
FY 1998-99 Revenue Est.(Current Law)			**$60,167,969**
General Fund Revenue Loss			**($1,982,211)**

SB 1327 - Proposed Gas Tax Rates

Rate Block (therms)	Estimated Deliveries (therms)	Rate per therm	Estimated Tax Receipts
Under 200	525,261,297	$0.0470	$24,687,281
201 to 15,000	347,356,476	$0.0350	12,157,477
15,001 to 60,000	267,537,478	$0.0240	6,420,899
60,001 to 500,000	716,606,231	$0.0200	14,332,125
500,001 and over	146,994,200	$0.0040	587,977
Total - SB 1327	2,003,755,682		$58,185,758
FY 1998-99 Revenue Est.(Current Law)			**$60,167,969**
General Fund Revenue Loss			**($1,982,211)**

FR[illegible]/9/98

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

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

S1327-ARBX-10

Page 1 of __

Date_____,1998

Comm. Sub. []
Amends Title []

Senator _____

moves to amend the bill, as amended by Amendment Number 1, by rewriting page 1, line 28 through page 2, line 2 of Amendment Number 1 to read:

"First 200	$.047
201-15,000	.035
15,001-60,000	.024
60,001-500,000	.020
Over 500,000	.004";

and on page 12, line 24, and on page 14, lines 15, 26, and 32, by deleting "Article 5D" and substituting "Article 5E";

and on page 14, line 21, by deleting "G.S. 105-187.38" and substituting "G.S. 105-187.44";

and on page 15, line 11, by deleting "1999." and substituting "1999, and applies to piped natural gas delivered on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1327
Proposed Committee Substitute S1327-PCS3622

Short Title: No Tax on Gas Cities. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES AND TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM.

The General Assembly of North Carolina enacts:

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

"ARTICLE 5E.

"Piped Natural Gas Tax.

"**§ 105-187.40. Definitions.**

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.

(4) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(5) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.035
15,001 to 60,000	.024
60,001 to 500,000	.020
Over 500,000	.004

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"**§ 105-187.42. Liability for the tax.**

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"**§ 105-187.43. Payment of the tax.**

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/10/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mona Momberte	Poyner & Spruill
[signature]	Sen Reed's office
David Simmons	ZDA, PA
Ron Kaylor	Kaylor Law Firm
Steve Upchurch	CP&L
John McAlister	Duke Energy
John Auston	Hood & Francis for Alcoa
[signature]	OSBM
Gray Styers	Kilpatrick Stockton LLP
Doug Rogers	NCDOT
Mary Klenz	League of Women Voters of Charlotte-Mach.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/10/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Betty Seizinger	League of Woman Voters of Char-Meck
Helen Lopina	Meck Co DSS
[signature]	Moore & Van Allen
[signature]	Sen. Cooper
C. Parker	Bove & Assoc.
[signature]	Bove + Assoc.
Alice Garland	Electricities
Cam Ayer	BPM HL
Stuart Dixon	NCNG
Calvin Wells	91
Glenn Fernigan	Glenn Fernigan Associates

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/10/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Pennaccia	Piedmont Natural Gas Co.
Jay Rouse	N.C. Beer & Wine Wholesalers Assn.
Sabra Faires	Dept. of Revenue
Sheila Pope	Sec. of State
Bernard Allen	SOS
Mike Martinelli	Pilkington - Libbey - Owens - Ford.
John Bailey	D.O.R.
Patti Seawell	DOR
Lennie Collins	DOR
Alan Miles	Bailey & Dixon LLP
Mike Carpenter	NCDOA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/10/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Greg Radford	NC DOR
Bill Davis	DOR
Patricia Eskew	League of Women Voters
Furman Walker	Leag of Women Voters / Charlotte-Meck
Bill McAulay	PSNC
Natalie Haskins	Charlotte Chamber

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 10, 1998

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

FAVORABLE

S.B. **1227** Update IRC Reference/Conform Gift Tax
Sequential Referral: None
Recommended Referral: None

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

S.B. **1327** No Tax on Gas Cities
Draft Number: PCS3622
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: SB 1227 and SB 1327

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 11, 1998

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

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

S.B **1226** Revenue Laws Technical Changes

Draft Number:	PCS3624
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1226 taken up on 6-10-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JUNE 11, 1998

12 NOON - ROOM 544

SB 1137 - Wesley Chapel Incorporated - Sen. Plyler

SB. 1166 - Farmville Annexation - Sen. Martin (Pitt)

SB 1252 - Simplify Privilege License Tax - Sen. Hoyle

SB 1354 - Bonds/Critical Infrastructure Needs - Sen. Kerr

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 11, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Thursday, June 11, 1998, at 12 noon in Room 544 with Senator Kerr presiding. There were 21 committee members present. Senator Kerr introduced the pages: Jessie Moore from Wake Forest, sponsored by Senator Wellons, and Stevi Rutledge, of Mt. Holly, sponsored by Senator Forrester.

SB 1166 - Farmville Annexation.

Senator Martin (Pitt County) explained his bill. Senator Webster moved for the adoption of a Committee Substitute and the motion carried. After discussion, and on motion by Senator Webster, the committee sub was given a Favorable Report by the committee. Copy of original Bill and Committee Sub included in the minutes.

SB 1137 - Wesley Chapel Incorporated.

Senator Plyler was recognized to explain his bill. Senator Purcell moved for adoption of a Committee Substitute and the motion carried. After Senator Plyler's explanation, Senator Purcell moved for a Favorable Report and the motion carried. Copy of original Bill and Committee Sub. included with the minutes.

Senator Hoyle presiding.

SB 1354 - Bonds/Critical Infrastructure Needs.

Senator Kerr was recognized by Senator Hoyle to explain this bill. Senator Kerr moved for adoption of a Committee Substitute and the motion carried. After Senator Kerr's explanation, there was a series of questions from the committee members. Billy Ray Hall, President of the NC Rural Economic Development Center, spoke in support of this bill. After more general discussion and questions, Senator Hoyle announced that this bill would not be voted on today but would be carried over to another meeting. Copy of original Bill, Committee Sub and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 1252 not heard in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1166

Short Title: Farmville Annexation. (Local)

Sponsors: Senator Martin of Pitt.

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

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Farmville:

BEING a portion of Greenfield Heights Subdivision in Farmville Township, Pitt County, North Carolina, and bounded on the south by the northern line of US Highway 264 Alternate, on the west by Henry L. Smith, on the north by R. K. Britt heirs, and on the east by Carolyn D. Mewborn, and being more particularly described as follows:

BEGINNING at a concrete monument marking the southwest corner of Greenfield Heights Subdivision, said concrete monument being located *S 57 26 58 E 7201.223 feet from a bronze disk in a traffic island marking North Carolina Geodetic Survey Station "MARLBORO" having North Carolina Coordinate System Coordinates of x = 2,418, 132.697 feet, y = 669,537.965 feet, North American Datum of 1927, and running thence with the west line of Greenfield Heights and with Henry L. Smith's east line N 12-42-45 E 1011.355 feet to an iron pipe, a corner with the R. K. Britt heirs; thence with the said Britt heirs south line and along the north lines of lot 109 and lot 110 N 87-53-02 E 225.000 feet to an iron pipe; thence with the common line between lot 110 and lot 111 S 22-43-58 E 186.974 feet to an iron pipe in the north line of Brooks Drive; thence crossing Brooks Drive S 41-00-55 E 74.769 feet to the northeast corner of lot 73; thence with the east line of lot 73, S 11-26-43 W 197.970 feet to a point at the southeast corner of lot 73; thence with the east line of

lot 76 and lot 77, S 24-20-07 W 235.066 feet to the southeast corner of lot 77; thence along the south line of lot 78, S 57-36-29 E 115.391 feet to the western line of a street; thence along the western line of said street N 36-47-45 E 105.680 feet; thence crossing said street S 56-56-15 E 60.127 feet to the northwest corner of lot 62; thence along the northern line of lot 62 S 56-56-15 E 175.000 feet; thence along the west line of lot 56, lot 55, lot 54, and lot 53, N 36-47-45 E 344.000 feet; thence along the west line of lot 52, N 27-00-45 E 86.300 feet; thence along the north line of lot 52, S 56-56-15 E 189.700 feet to a point in the west line of Shackleford Street; thence crossing said street S 56-56-09 E 60.122 feet to a point in the east line of said street; thence along the north line of lot 44 S 56-56-15 E 175.000 feet; thence along the west line of lots 28, 27, and 26, N 36-47-45 E 258.000 feet to the northwest corner of lot 26; thence along the west line of lot 25, N 54-03-45 E 108.000 feet; thence along the west line of lots 24 and 21, N 01-49-15 W 157.930 to the southern line of Brooks Drive; thence along the south line of Brooks Drive N 88-10-45 E 382.590 feet to northeast corner of lot 19; thence along the east line of lot 19, S 01-49-15 E 163.860 feet to a point in the north line of lot 17; thence along the north line of lot 17 S 67-41-15 E 49.260 feet to a point in the west line of the Carolyn D. Mewborn tract; thence along the eastern line of Greenfield Heights and the west line of Carolyn D. Mewborn the following 6 courses: (1) S 36-43-00 W 916.838 to a corner of lot 9; (2) thence with lot 9, S 58 20-28 E 49.773 feet, (3) thence S 40-30-32 W 285.016, (4) thence S 40-30-32 W 42.002 feet, (5) thence S 43-14-11 W 338.901 feet to a concrete monument, (6) thence S 49-13-04 W 97.908 feet to a concrete monument of the north line of US 264A; thence with the north line of US 264A along a curve whose chord bears N 52-34-01 W 169.830 feet to the intersection of the eastern line of Hagan Street with the north line of US 264A; thence with the north line of US 264A N 56-39-13 W 61.041 feet to the western line of Hagan Street; thence along the northern line of US 264A N 56-58-51 W 1015.451 to the point of beginning containing 37.74 acres, all according to a survey and plat by McDavid Associates, Inc. dated May 6, 1998 entitled "Annexation Survey Town of Farmville, Part of Greenfield Heights Subdivision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1166

State Government, Local Government, and Personnel Committee Substitute Adopted 6/10/98

Proposed Committee Substitute S1166-PCSA865

Short Title: Farmville Annexation. (Local)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE AND TO EXTEND THE TERMS OF THE MAYOR AND BOARD OF COMMISSIONERS OF THE TOWN OF LEGGETT FROM TWO TO FOUR YEARS.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Farmville:

BEING a portion of Greenfield Heights Subdivision in Farmville Township, Pitt County, North Carolina, and bounded on the south by the northern line of US Highway 264 Alternate, on the west by Henry L. Smith, on the north by R. K. Britt heirs, and on the east by Carolyn D. Mewborn, and being more particularly described as follows:

BEGINNING at a concrete monument marking the southwest corner of Greenfield Heights Subdivision, said concrete monument being located *S 57-26-58 E 7201.223 feet from a bronze disk in a traffic island marking North Carolina Geodetic Survey Station "MARLBORO" having North Carolina Coordinate System Coordinates of x = 2,418, 132.697 feet, y = 669,537.965 feet, North American Datum of 1927, and running thence with the west line of Greenfield Heights and with Henry L. Smith's east line N 12-42-45 E 1011.355 feet to an iron pipe, a corner with the R. K. Britt heirs; thence with the said Britt heirs south line and along the north lines of

lot 109 and lot 110 N 87-53-02 E 225.000 feet to an iron pipe; thence with the common line between lot 110 and lot 111 S 22-43-58 E 186.974 feet to an iron pipe in the north line of Brooks Drive; thence crossing Brooks Drive S 41-00-55 E 74.769 feet to the northeast corner of lot 73; thence with the east line of lot 73, S 11-26-43 W 197.970 feet to a point at the southeast corner of lot 73; thence with the east line of lot 76 and lot 77, S 24-20-07 W 235.066 feet to the southeast corner of lot 77; thence along the south line of lot 78, S 57-36-29 E 115.391 feet to the western line of a street; thence along the western line of said street N 36-47-45 E 105.680 feet; thence crossing said street S 56-56-15 E 60.127 feet to the northwest corner of lot 62; thence along the northern line of lot 62 S 56-56-15 E 175.000 feet; thence along the west line of lot 56, lot 55, lot 54, and lot 53, N 36-47-45 E 344.000 feet; thence along the west line of lot 52, N 27-00-45 E 86.300 feet; thence along the north line of lot 52, S 56-56-15 E 189.700 feet to a point in the west line of Shackleford Street; thence crossing said street S 56-56-09 E 60.122 feet to a point in the east line of said street; thence along the north line of lot 44 S 56-56-15 E 175.000 feet; thence along the west line of lots 28, 27, and 26, N 36-47-45 E 258.000 feet to the northwest corner of lot 26; thence along the west line of lot 25, N 54-03-45 E 108.000 feet; thence along the west line of lots 24 and 21, N 01-49-15 W 157.930 feet to the southern line of Brooks Drive; thence along the south line of Brooks Drive N 88-10-45 E 382.590 feet to the northeast corner of lot 19; thence along the east line of lot 19, S 01-49-15 E 163.860 feet to a point in the north line of lot 17; thence along the north line of lot 17 S 67-41-15 E 49.260 feet to a point in the west line of the Carolyn D. Mewborn tract; thence along the eastern line of Greenfield Heights and the west line of Carolyn D. Mewborn the following 6 courses: (1) S 36-43-00 W 916.838 feet to a corner of lot 9; (2) thence with lot 9, S 58-20-28 E 49.773 feet, (3) thence S 40-30-32 W 285.016 feet, (4) thence S 40-30-32 W 42.002 feet, (5) thence S 43-14-11 W 338.901 feet to a concrete monument, (6) thence S 49-13-04 W 97.908 feet to a concrete monument on the north line of US 264A; thence with the north line of US 264A along a curve whose chord bears N 52-34-01 W 169.830 feet to the intersection of the eastern line of Hagan Street with the north line of US 264A; thence with the north line of US 264A N 56-39-13 W 61.041 feet to the western line of Hagan Street; thence along the northern line of US 264A N 56-58-51 W 1015.451 feet to the point of beginning containing 37.74 acres, all according to a survey and plat by McDavid Associates, Inc. dated May 6, 1998, entitled "Annexation Survey Town of Farmville, Part of Greenfield Heights Subdivision."

Section 2. Section 3 of the Charter of the Town of Leggett, being Chapter 4 of the Local Laws of 1973, reads as rewritten:

"**Sec. 3.** The town shall be governed by a mayor and a board of commissioners who shall be elected from the town at large for terms of ~~two~~ four years. The powers and duties of the mayor shall be those conferred by law, together with such powers and duties as the board of commissioners may confer upon him pursuant to law. The government and general management of the town shall be vested in the board of commissioners."

Section 3. Section 1 of this act is effective when it becomes law. Section 2 of this act is effective for elections beginning with the next general election in November 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1137
Proposed Committee Substitute S1137-PCS4690

Short Title: Wesley Chapel Incorporated. (Local)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Wesley Chapel is enacted as follows:

"CHARTER OF VILLAGE OF WESLEY CHAPEL.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Wesley Chapel, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Wesley Chapel.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the East Fork Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine

Road in an easterly direction to the intersection of the extension of the centerline of Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwesterly with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048

approximately 853 feet to a point being the southeastern property boundary line of parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING. Excluded from this description are Tracts IV, V, and VI annexed to the Town of Indian Trail under Part 4 of Article 4A of Chapter 160A of the General Statutes by Annexation Ordinance 40 adopted May 25, 1998, more particularly described as follows:

TRACT IV:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road) (the right-of-way for each road being 60 feet wide), and running from said beginning point with the center of the right-of-way of S.R. 1377 as follows: (1) N 44-22-25 E 148.77 feet to a point; (2) N 40-39-45 E 528.84 feet to a point, a corner of Lot 8 of Houston Farm Subdivision, Phase III (Plat Cabinet B, File 306-A, Union County Registry); thence with the southwestern boundary of Lot 8 of said subdivision, South 35-01-09 E 231.18 feet to a point, a corner of Lot 9 of Houston Farm Subdivision, Phase III; thence with southwest boundary of Lot 9 of said subdivision, S 34-51-04 E 249.94 feet to a point in the center of the right-of-way of S.R. 1162; thence with the center of the right-of-way of S.R. 1162 as follows: (1) S 82-52-40 W 134.60 feet to a point; (2) S 80-44-44 W 558.83 feet to a point; (3) S 80-32-27 W 39.54 feet to the point of BEGINNING, and containing 3.54 acres, more or less, as shown on copy of map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated October 27, 1986, and recorded in Plat Cabinet B, at Page 306-A, Union County Registry.

TRACT V:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects with the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road), and running from said beginning point with the centerline of the right-of-way of S.R. 1162 as follows: (1) S 80-32-25 W 320.00 feet to a point; (2) S 80-33-44 W 591.51 feet to a point; (3) S 75-37-55 W 89.30 feet to a point; (4) S 47-08-50 W 60.77 feet to a point; (5) S 11-11-50 W 64.16 feet to a point near the center of the intersection of S.R. 1162 and S.R. 1355; thence N 15-46-08 W 35.86 feet to a point within the right-of-way of S.R. 1162; thence N 32-02-38 W 181.80 feet to a point in the center of the right-of-way of S.R. 1355; thence with the center of the right-of-way of S.R. 1355 as follows: (1) N 29-11-30 W 293.99 feet to a point; (2) N 32-02-58 W 431.58 feet to a point; (3) N 32-38-20 W 364.15 feet to a point in the center of said road right-of-way; thence N 45-02-45 E 3329.74 feet to a point in the southwestern boundary of the right-of-way of S.R. 1354 (known as Hawfield Road); thence within the right-of-way of S.R. 1354 (but not the centerline thereof), S 36-43-29 E 1656.35 feet to the point where the centerline of S.R. 1354 intersects the centerline of the right-of-way of S.R. 1377; thence with the center of the right-of-way of S.R. 1377 as follows: (1) S 51-43-45 W 98.35 feet to a point; (2) S 47-36-55 W 68.82 feet to a point; (3) S 41-39-39 W 102.57 feet to a point; (4) S 38-38-51 W 105.59 feet to a point; (5) S 38-07-38 W 270.65 feet to a point; (6) S 39-00-58 W 103.56 feet to a point; (7) S 40-22-09 W 110.27 feet to a point; (8) S 40-39-45 W 1471.25 feet to a point; (9) S 44-22-25 W 148.77 feet to the point of BEGINNING, and containing 129.06 acres, more or less, as shown on copy of unrecorded map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated March 6, 1986.

TRACT VI:

Beginning at a point in the centerline of Goldmine Road (S.R. 1162) the common corner of Lot #12 and #11 of Houston Farms, Phase I as shown on plat recorded in Plat Cabinet A, File 101-A, Union County Registry. Thence with the centerline of

said road as follows: 1st N12-56-05W 122.27', 2nd N13-03-20W 105.36', 3rd N07-14-55W 76.96', 4th N11-11-50W 64.16', 5th N47-08-50W 60.77', 6th N76-37-55E 80.30', 7th N80-33-40E 419.44' to a point in the centerline of said road, the common corner of Lot #11 and #10, thence S33-44-00W 358.84' to an iron stake the common corner of Lot #10, #11, #12, thence S53-00-00W 366.35' to the point and place of BEGINNING, being all of Lot #11 and containing 3.34 acres.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of Village of Wesley Chapel is the Village Council, which has four members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Al Black is appointed Mayor, and Allen Callahan, Mike Hafey, Ron Lawrence, and Beverly Williams are appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the two candidates receiving the highest numbers of votes are elected to a four-year term, and the two candidates receiving the next highest number of votes are elected to two-year terms. In 2001 and each two years thereafter, two members are elected for a four-year term.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Village to Operate under Mayor-Council Plan.** The Village of Wesley Chapel operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in Village of Wesley Chapel shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Village may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par

or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Village may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

Section 3. This act includes within the boundary of the Village of Wesley Chapel some areas annexed by the Town of Indian Trail under Annexation Ordinance 30 adopted January 13, 1998, and Annexation Ordinance 36 adopted February 17, 1998. To the extent that this act conflicts with those ordinances, this act prevails. This act does not affect the validity of those ordinances as to any territory not included within the boundaries of the Village of Wesley Chapel, and those ordinances are validated as to such other territory.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1137

Short Title: Wesley Chapel Incorporated. (Local)

Sponsors: Senators Plyler, Purcell, and Gulley.

Referred to: Rules and Operations of the Senate.

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Wesley Chapel is enacted as follows:

"CHARTER OF VILLAGE OF WESLEY CHAPEL.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Wesley Chapel, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Wesley Chapel.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the East Fork Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine Road in an easterly direction to the intersection of the extension of the centerline of

Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwesterly with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048 approximately 853 feet to a point being the southeastern property boundary line of

parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of Village of Wesley Chapel is the Village Council, which has four members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Al Black is appointed Mayor, and Allen Callahan, Mike Hafey, Ron Lawrence, and Beverly Williams are appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the two candidates receiving the highest numbers of votes are elected to a four-year term, and the two candidates receiving the next highest number of votes are elected to two-year terms. In 2001 and each two years thereafter, two members are elected for a four-year term.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Village to Operate under Mayor-Council Plan.** The Village of Wesley Chapel operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in Village of Wesley Chapel shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Village may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Village may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1354

Short Title: Bonds/Critical Infrastructure Needs. (Public)

Sponsors: Senators Kerr; Albertson, Ballance, Ballantine, Carpenter, Carrington, Cochrane, Cooper, Dalton, East, Forrester, Garwood, Gulley, Hartsell, Hoyle, Jenkins, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Odom, Page, Perdue, Phillips, Plyler, Purcell, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS CRITICAL STATEWIDE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, WATER CONSERVATION PROJECTS, AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(1) $465,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to

provide funding by grants to local government units for wastewater treatment and water supply distribution needs.

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, and water conservation and water reuse projects.

(3) $100,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means a numerical rating of a unit of local government developed by the North Carolina Municipal Council, Inc. The rating formula is based on 100 being a theoretically 'perfect' unit of government and is an assessment of the creditworthiness of the unit. Units of local government with rating below 75 or with no ratings are generally considered to be 'nonbank eligible' and such communities therefore have limited, if any access to the private market for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan,

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1354
Proposed Committee Substitute S1354-CSLX-6/10
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Bonds/Critical Infrastructure Needs. (Public)

Sponsors:

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS CRITICAL STATEWIDE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, WATER CONSERVATION PROJECTS, AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

(1) $485,000,000 to provide State matching funds required to receive federal wastewater or water

supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to provide funding by grants to local government units for wastewater treatment and water supply distribution needs.

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, and water conservation and water reuse projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management. In addition, great emphasis shall also be placed on the protection and improvement of fisheries habitats for both saltwater and freshwater fish based upon recommendations made by the Director of the Marine Fisheries Division of the Department of Environment and Natural Resources.

(b) Natural Gas Bonds.

$150,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Senate Bill 1354
Proposed Committee Substitute S1354-CSLX-6/10
Bonds/Critical Infrastructure Needs
Explanation -- 6/11/98

The proposed committee substitute (PCS) authorizes the issuance of general obligation bonds in the amount of $955 million, subject to approval by the voters in a bond referendum, for $805 million in grants and loans to local governments for water supply systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects and for $150 million in grants, loans, and other financing to public or private entities for the construction of natural gas facilities.

The PCS provides that the bond referendum will be held November 3, 1998. Two separate questions will appear on the ballot—one for the authorization of clean water bonds and one for the authorization of natural gas bonds.

The PCS provides for the allocation of the bond proceeds as follows:

Total:	**$955 million**
A. State water/sewer grants for local governments.	**$485 million**
Administered by DENR	
1. Wastewater:	
• less than 75 bond rating or no bond rating	$ 85 million
• at least or equals 75 bond rating	$ 80 million
2. Water Supply:	
• less than 75 bond rating or no bond rating	$ 85 million
• at least or equals 75 bond rating	$ 80 million
3. State match for EPA loan funds:	$ 35 million
• $ 7 million/year for five years	
Administered by Rural Economic Development Center	
4. Supplemental and capacity building grants: To meet local match requirements for infrastructure projects related to economic development in depressed areas.	$ 50 million
5. Grants for unsewered communities:	$ 50 million
Administered by Department of Commerce	$ 20 million
6. Infrastructure funding for industries in economically depressed counties.	
B. Water/sewer loan funds for local governments.	**$320 million**
(Direct loans/State pass-through bonds)	

1. Wastewater:
   less than 75 bond rating — $ 10 million
   at least or equals 75 bond rating — $150 million
2. Water Supply:
   less than 75 bond rating — $ 10 million
   at least or equals 75 bond rating — $150 million

C. Natural gas service. — **$150 million**
Extend natural gas service to the remaining 22 unserved counties.*

Section-by-Section Analysis

Section 1. Short title is Clean Water and Natural Gas Bond Act of 1998.

Section 2. Purpose of the PCS is to authorize nine hundred fifty-five million dollars in general obligation bonds. The bond proceeds are to be allocated as follows:

(a) Clean Water Bonds
   (1) $485 million to provide State matching funds for federal moneys and to provide grants to local government units for water and sewer needs.
   (2) $320 million to provide loans to local government units for water and sewer needs.

(b) Natural Gas Bonds
   $150 million to provide grants, loans, or other financing to natural gas distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions are set out.

Section 4. Bond bill "boiler plate" language. Authorizes the State Treasurer to issue and sell at any time Clean Water Bonds, subject to a favorable vote of the people. Also authorizes the State Treasurer to issue and sell at any time Natural Gas Bonds, subject to a favorable vote of the people.

Section 5. Specifies what the bond proceeds may be used for and the amount of bond proceeds that may be used for each purpose. The two main purposes are (i) water and sewer needs (Clean Water Bonds) and (ii) natural gas needs (Natural Gas Bonds).

The Clean Water Bond proceeds ($805 million) are divided into two categories, one for grants and one for loans.

Water/Sewer Grants ($485 million)

The total amount of bond proceeds that is to be used for grants to local governments is $485 million and is allocated among the Department of Environment

*Counties not likely to be served in the next two years

and Natural Resources, the Rural Economic Development Center, and the Department of Commerce.

The Department of Environment and Natural Resources is to use $365 million in bond proceeds for high unit wastewater grants under the Clean Water Revolving Loan and Grant Fund, for high unit water supply grants under the Clean Water Revolving Loan and Grant Fund, and to match federal funds in compliance with the statutory provisions of the Clean Water Revolving Grant and Loan Fund.

The Rural Economic Development Center is to use $50 million as grants to local government units that are "unsewered communities" to assist with financing of wastewater treatment works and wastewater collection systems.

The Rural Economic Development Center is to use $50 million as supplemental and capacity grants to local government units in compliance with the criteria set out in subdivision (3). (See pages 13-14 of the PCS.) Of the $50 million in bond proceeds, $40 million is allocated for supplemental grants and $10 million is allocated for capacity grants. However, no more than a total of $10 million in bond proceeds ($8 million limit on supplemental grants and $2 million limit on capacity grants) may be used in any fiscal year.

The criteria for the grants to be administered by the Rural Economic Development Center is set out. An annual review by the Secretary of Commerce to verify compliance by the Rural Economic Development Center with the legislative criteria for grants is required, and certain documentation and records regarding those same grants must be provided to the Department of Commerce.

The Department of Commerce is to use $20 million as grants for water and sewer, $10 million to be administered in the same manner as funds in the Industrial Development Fund and $10 million to be administered in the same manner as funds in the Utility Account of the Industrial Development Fund.

Water/Sewer Loans ($320 million)

The total amount of bond proceeds that is to be used for loans to local governments is $320 million. Those proceeds are allocated to the Department of Environment and Natural Resources to be loaned out in compliance with the statutory criteria under the Revolving Loan and Grant Fund, but not as revolving loans. The repayment of the loans is to be credited to the General Fund and may be used for debt service on the bonds.

A final provision under the Clean Water Bond portion of this section provides that the General Assembly may increase or decrease allocations of the bond proceeds for clean water purposes, provided the aggregate amount of the allocations does not exceed $805 million.

Natural Gas Financing ($150 million)

The total amount of proceeds that is to be used for natural gas needs is $150 million. Those proceeds may be used to provide any type of financing to natural gas local distribution companies, private entity, public entity or person seeking natural gas distribution franchises for the construction of natural gas facilities. The bond proceeds are to be expended under the direction and

supervision of the Director of the Budget. The North Carolina Utilities Commission must report quarterly to the Join Legislative Commission on governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

Section 6. Bond bill "boiler plate" language. Provides technical provisions governing allocation and disbursement of bond proceeds.

Section 7. Provides that the bond referendum shall be held on the first Tuesday after the first Monday of November 1998. There are two separate questions, one addressing whether $805 million in general obligation bonds should be issued to make loans and grants to local governments to pay for all or part of the cost of clean water projects, and one addressing whether $150 million in general obligation bonds should be issued to provide grants, loans, or other financing to public or private entities for the construction of natural gas facilities.

Section 8. Bond bill "boiler plate" language. Provides technical provisions governing bonds, including terms, form, manner of sale, refunding bonds, etc.

Section 9. Bond bill "boiler plate" language. Provides technical provisions governing credit facilities, variable interest rates, redemption, and remarketing.

Section 10. Sets out special provisions and additional criteria governing clean water loans. Provides that the section applies only to loans that are not made from the Clean Water Revolving Loan and Grant Fund. Creates a special Clean Water Bonds Loan Fund for the bond proceeds that are to be used to make loans. Provides that interest on the proceeds may be used for loans for the purposes indicated in the PCS. Sets out the criteria that must be met to qualify for a loan and the procedures that must be followed both to apply for the loan and to award the loan including hearings and the opportunity for voters to petition for a vote. Authorizes the State to intercept State funds otherwise distributable to a local unit if the unit fails to repay its loan. Allows inspection by DENR personnel or qualified engineers of a project for which a loan has been made. Authorizes the State Treasurer, the Local Government Commission, and DENR to adopt, modify, and appeal rules as necessary for administration of their various duties. Also includes a reporting requirement.

Section 11. Sets out reporting requirements for the Rural Economic Development Center, the Department of Commerce, and the Department of Environment and Natural Resources regarding grants awarded from bond proceeds.

Section 12. Requires the Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center to monitor compliance with goals for participation by minority businesses with regard to projects funded by bond proceeds.

Section 13. "Boilerplate language" governing interpretation of the act.

Section 14. Establishes the State Infrastructure Council. The Council is charged with developing a strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs. The Council consists of 17 members, 12 appointed members and 5 ex officio members. Of the 12 appointed members, four are appointed by the Governor, four are appointed by the President

Pro Tempore of the Senate, and four are appointed by the Speaker of the House of Representatives. The five ex officio members are the Secretary of Commerce, the Secretary of Environment and Natural Resources, the State Treasurer, the Executive Director of the League of Municipalities, and the Executive Director of the County Commissioners Association. The Governor appoints the Chair from the members biennially. The Department of Environment and Natural Resources must provide office space and staff as requested by the Council. The Council must report annually to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division regarding its progress in carrying out its charge. This section becomes effective only if the bond referendum passes.

Section 15. Amends G.S. 159G-6 to increase the cap on the total amount of any loan made from the Clean Water Revolving Loan and Grant Fund from three million dollars to ten million dollars and to increase the cap on the total amount of any grant made from the Clean Water Revolving Loan Grant Fund from one million dollars to three million dollars. Further amends G.S. 159G-6(b) to revise the grant eligibility threshold to 1.5 percent of the median household income of the unit rather than the county. Also makes a technical correction. This section becomes effective only if the bond referendum passes.

Section 16. Provides legislative findings stating the need for additional funding methods, including appropriations and bond proceeds, to facilitate the expansion of natural gas service to unserved areas of the State where such expansion may not be economically feasible with traditional funding methods.

Section 17. Creates new G.S. 62-159 authorizing the Utilities Commission to provide funding for the expansion of natural gas service to unserved areas of the State through appropriations or bond proceeds for the construction of natural gas facilities that it would otherwise not be economically feasible to construct. Provides criteria for the Commission to consider in determining whether to approve the use of funds for a particular project. Provides for a recipient to return project funds to the Commission in the event that the project is later determined to be economically feasible and for returned funds to be used for other expansion projects.

Authorizes the Utilities Commission to cancel an existing franchise and grant a recipient of expansion funds a new exclusive franchise if the public interest requires it. Requires the Commission to report to the Joint Legislative Utility Review Committee on the use of expansion funding.

Section 18. Amends the policy statement in G.S. 62-2 to allow for more than one expansion fund to be established in order to facilitate the expansion of natural gas service to unserved areas of the State.

Section 19. Effective date. With the exception of Sections 14 and 15, the act is effective when it becomes law. Sections 14 and 15 become effective only if the bond referendum passes. The Utilities Commission must immediately begin rulemaking process when the act becomes law.

ANNUAL DEBT SERVICE REQUIREMENTS ($MILLION)
$635 MILLION OF CLEAN WATER BONDS*

Fiscal Year	Total Principal	Total Interest	Total Debt Service
1999-2000	$15.8	$19.1	$34.9
2000-2001	31.7	37.1	68.8
2001-2002	31.7	35.2	66.9
2002-2003	31.7	33.3	65.0
2003-2004	31.7	31.4	63.1
2004-2005	31.7	29.5	61.2
2005-2006	31.7	27.6	59.3
2006-2007	31.7	25.7	57.4
2007-2008	31.7	23.8	55.5
2008-2009	31.7	21.9	53.6
2009-2010	31.7	20.0	51.7
2010-2011	31.7	18.1	49.8
2011-2012	31.7	16.2	47.9
2012-2013	31.7	14.3	46.0
2013-2014	31.7	12.4	44.1
2014-2015	31.7	10.5	42.2
2015-2016	31.7	8.6	40.3
2016-2017	31.7	6.7	38.4
2017-2018	31.7	4.8	36.5
2018-2019	32.3	2.9	35.2
2019-2020	16.4	1.0	17.4
Total	$635.0	$400.7	$1,035.7

Source: Office of State Treasurer, May 27 1998, modified by FRD for increase in size of authorization

*Represents the portion of the $955 million bond issue that will not be offset by loan repayments by local government units.

This analysis assumes bond referendum held in November, 1998 and that the bonds are issued in two installments (3/99, 3/00) at an average interest rate of 6.0%.

Goldsboro News-Argus Sunday June 7, 1998

Water districts warned to prepare for the future

By DON McLOUD
News-Argus Staff Writer

State officials concerned about a reduction in groundwater levels in the Central Coastal Plain are warning local governments and water districts to look for ways to reduce demand and find other sources of water.

The area includes eastern Wayne County, as well as Lenoir County, where some of Wayne's water districts have wells. The region also encompasses Jones, Onslow, Pitt, and Wilson counties and west Craven County.

The state is most concerned with Kinston, according to Nat Wilson, lead hydrogeologist with the state Division of Water Resources. But as water providers in the region prepare five-year plans, the state is telling water system officials in the region to prepare for future regulations.

For Wayne County, the area of most concern is Fork Water District in the Rosewood area. All of the district's wells are in Lenoir County, where levels in the aquifer have dropped at a rate that concerns officials with the Division of Water Resources. An aquifer is a large underground source of water.

Tony McCabe, Fork district manager, says there is no mandate from the state. But the district is looking for other sources to prepare for the future.

This week, officials from the Division of Water Resources are scheduled to help find a suitable place to drill for a well in the Rosewood area. A previous attempt to drill a well there failed.

The Fork board will also hear a presentation this month from Johnston County about buying water for emergencies, and the district will soon finish a water line to Southwestern Wayne Sanitary District for emergency use.

McCabe sees excessive use of

See Water on 4A

Water

Continued from 1A

water as one of the main problems facing the water district. Last year, Fork placed a mandatory restriction on irrigating lawns. Other water districts in the county also asked residents to reduce lawn irrigation, but none had mandatory restrictions.

"Water usage got out of hand," McCabe said. "A lot of people feel the water system is basically unlimited."

Fork board members also considered joining the Wayne Water Districts, a five-member partnership of nonprofit water districts around the county. That issue was one of the deciding factors in last year's elections, when opponents of joining the system won a majority on the district's board.

Over the 10 years he has been with the district, McCabe said, there has been a lot of development, and well levels in Lenoir County have dropped. But he feels that one or two wells operating in the Fork district would help alleviate pressure on the system during dry summer months. It takes three to four years for a well to come on line.

"We've said they are going to have to decrease their demand, so that we can allow the aquifer to come into equilibrium. If we stabilize it, we will know how long it will last."

Nat Wilson,
lead hydrogeologist, state Division of Water Resources

Wayne Water Districts has almost completed a circle of water lines around the county that will transfer water from one area of the county to the other at a moment's notice.

Some of the Wayne Water Districts' wells are in Lenoir County where the aquifer has dropped, but the system's manager, Eddie Coltrane, says he is not too concerned, as the districts have many different sources of water.

"If it was going down all the

Wilson said the state is helping districts like Fork find sources of water. It is also encouraging water systems to come up with regional solutions.

Wilson's and other state officials' main concern is over the Black Creek and Upper Cape Fear aquifers, which have declined by rates of 2 to 8 feet a year in places of heavy use.

"In some cases the water declined below the top of the aquifer," Wilson said. When it drops below the top, it takes longer for it to refill because of air pockets and less water is available to be pumped from the wells.

Wells that once yielded 850 gallons of water a minute are down to 600 to 650 gallons in some areas of the Central Coastal Plain. Wilson said the state is not at the regulatory stage yet, but the process is beginning. It will be lengthy and allow for public comment, but the state needs to begin the process soon to prepare for future problems, he said.

The Division of Water Resources plans to go before the state's Environmental Management Commission later this year to develop a plan to protect the aquifers in the Central Coastal Plain from overuse. The EMC is the same commission that developed the nitrogen-reduction plan for the Neuse River for sewer systems, hog operations, farms and other sources of pollution.

So far, Wayne County is in good shape, officials say. Goldsboro gets its water from the Neuse River. The western part of the county's aquifer is not declining like the ones in the Central Coastal Plain, Wilson said, because it is closer to the surface and does not take as long to refill.

time and not coming up some I would really be worried," Coltrane said of the aquifer. But for now, "we're doing fine."

Coltrane believes the state needs to study the aquifers and educate people about wasting water, but he does not look forward to the state regulating water usage. "If you're growing, adding one thousand customers a year," he asks, "are you going to tell them they can't get on a water system?"

There are many large industrial users on the aquifers that should be required to go to surface water like rivers and lakes before forcing the public to do so, he says.

As far as the state Division of Water Resources is concerned, Wilson says, "I think that we will continue to head in the direction of regulation."

Wilson says the aquifer will always have water, but "it's going to be impossible to use it as they have in the past."

The state is unsure to what extent the aquifers' levels have dropped. The goal for now is to get the water systems to find alternative sources of water and reduce demand to relieve the pressure on the aquifers in the region.

"We've said they are going to have to decrease their demand, so that we can allow the aquifer to come into equilibrium," Wilson said. "If we stabilize it, we will know how long it will last."

"It may be that in the aggregate, the aquifer can supply all of that demand" by distributing the usage more evenly throughout, he adds. "We want to get people to understand this is a serious situation, and they need to be in the planning process."

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Thursday, June 11th**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NCACC
Annette Ethridge	Gov's Office
Willie Riddick	DOR
Crissy Parker	Bone and Associates
Danny Rogers	NCDOT
Bobby Stone	NC DWQ
[illegible]	DENR
R. Rogers	DENR
[illegible]	[illegible]
Patti Seawell	DOR
[illegible]	OSBM

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Thursday, June 11th**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Mike Carpenter	NCBSA
Sabra Faires	Dept of Revenue
William R. Gilmore	Utilities Commission
Billy R. Hall	NC Rural EC
Jean Clewis Klein	NC Rural Coop
Linda Gunn	REDC
David Knight	NC Sierra Club, NC American Planning Assoc.
Katie Adams	CCNC
Bill Owens	N.C House
Gisele Rankin	P. Staff - NCUC

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Thursday, June 11th**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stu Dixon	NCNG
Cam Cover	BPMHL
J. Allen Adams	Consulting Engineer General Assembly North Carolina
Jack Cyrt	"
Rickie Street	"
Alice Garland	Electricities
Leslie Bevacqua	NCCBT
Nancy Bradley	NCCBA
[illegible]	NCBA
Al Regan, Ron Aycock, Jim Blackburn, Paul Meyer	N.C. Assoc of Co. Comm.
Jim Long	NCAFI
Tommy Stevens	DWQ

VISITOR REGISTRATION SHEET

SENATE FINANCE **Thursday, June 11th**

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Lanier	UNC Wilmington

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, June 15, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

S.B. **1137** Wesley Chapel Incorporated

Draft Number:	PCS4690
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1166** Farmville Annexation

Draft Number:	PCSA865
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: June 11 SB 1137 1166

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 16, 1998

ROOM 544 - 12 NOON

WELCOME - SENATOR DAVID HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

S.B. 1354 - BONDS/CRITICAL INFRASTRUCTURE NEEDS
SENATOR JOHN KERR

S.B. 1252 - SIMPLIFY PRIVILEGE LICENSE TAX
SENATOR DAVID HOYLE

ADJOURNMENT

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 16, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Tuesday, June 16, 1998 at 12:00 Noon in Room 544 of the LOB. There were 25 members of the committee present. Senator David Hoyle, Co-chairman, called meeting to order and introduced the Pages, they were: Kara Saunders and Michael Pennink both from Fayetteville, North Carolina and sponsored by Senator Tony Rand.

S. B. 1252 - Simplify Privilege License Tax

Senator Hoyle explained the proposed committee substitute and the amendments that were incorporated into this bill. Senator Mark McDaniel moved for adoption of a proposed committee substitute for the purpose of discussion, motion passed. Senator McDaniel also moved for a "favorable" report, motion passed. Richard Bostic from Fiscal Research spoke on the fiscal impact of this bill. Mr. Jay Rouse with the N. C. Beer and Wine Wholesalers spoke on the bill. (Copy of the Bill, Explanation, Fiscal Note, Proposed Committee Substitute, Explanation of PCS and Fiscal Note on PCS are included with Minutes)

S. B. 1354 - Bonds/Critical Infrastructure Needs

Senator John Kerr came to explain the bill. Senator Kerr moved for adoption of a proposed committee substitute to this bill for discussion, motion passed. Senator Kerr explained the proposed committee substitute. The following people representing various organizations spoke on the bill, they are: Mr. Bobby Blow with N. C. Water Quality Division, Mr. Billy Ray Hall with N. C. Rural Economic Development Center, Ms. Leslie Bevacqua with N. C. Citizens for Business and Industry, Mr. Nat Mund with Construction Council of N. C, Mr. Ed Regan with the N. C. Association of County Commissioners, Mr. Andrew L. Romanet, Jr. with League of Municipalities, Mr. David Knight with the N. C. Chapter of Planning and Sierra Club and Ms. Cindy Finan with N. C. American Water Works Association and Water Environment Association. Senator Blust sent forth an amendment to the bill and made a motion for adoption, after some discussion by members of the committee in support and in opposition to the amendment, the amendment failed. Senator Eric Reeves asked a question relative to the usage of the money. His question was answered by Emily Johnson, Staff Counsel. Senator Virginia Foxx sent forth an amendment to the bill, after some discussion, the amendment was adopted. Senator Roy Cooper moved to give the bill a "favorable as amended" report and to roll it into a new committee substitute, motion passed. (Copy of Bill, PCS, Amendments, New PCS are included in the Minutes).

Meeting was adjourned

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #2
Committee Report dated 6-16-98 is Attachment #3
Committee Report dated 6-17-98 is Attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1252

Short Title: Simplify Privilege License Tax. (Public)

Sponsors: Senators Hoyle, Cochrane, Kerr, and Hartsell.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2.

"~~Schedule B. License~~ Privilege Taxes."

Section 2. G.S. 105-33 reads as rewritten:

"**§ 105-33. Taxes under this Article.**

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed ~~as State license taxes~~ for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named,~~ named. ~~and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.~~ License Taxes. -- A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a fiscal year, begins to engage in an activity for which this Article requires a license.

Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) ~~Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.~~ Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

~~(d) The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.~~

(e) Repealed by Session Laws 1989, c. 584, s. 1.

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a~~

EXPLANATION OF SENATE BILL 1252:
Simplify Privilege License Tax

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 2, 1998
SPONSOR: Senator Hoyle

Senate Bill 1252 is a recommendation of the Revenue Laws Study Committee and makes numerous changes to simplify and/or reduce the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. The Bill also increases ABC permit fees. The changes to the taxes and fees on alcoholic beverages would become effective May 1, 1999. All other changes would become effective July 1, 1999.

Amusements. The current law imposes an annual $50 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105. The license tax is due July 1 of each year and the tax on gross receipts is due monthly. Taxable forms of entertainment include athletic contests, sporting events, concerts, plays, musicals, night clubs, comedy clubs, amusement parks, carnivals, and festivals. Antique shows, craft shows, and auto shows, when a band is provided or a celebrity signs autographs, are also subject to the tax. Other taxable amusements are fashion shows, beauty pageants, air shows, mud slings, and tractor pulls. Current law also imposes a $50 privilege license tax and gross receipts tax on amusements such as a circus, menagerie, wild west show, a dog and/or pony show, or any other similar amusement not taxed in Article 2. The privilege tax on these amusements is assessed for each day or part of a day that the circus or similar amusement is held. Exempt amusements set out in Article 2 are high school and elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

The State privilege license tax on amusements is treated as an advance payment of the corresponding gross receipts tax, and the license tax is applied as a credit upon the gross receipts tax. Sections 4 and 5 of the Bill repeal the State privilege license taxes on amusements. This repeal would simplify the taxes assessed on amusements and would be revenue neutral since the license tax is a credit upon the gross receipts tax. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax.

Section 6 reorganizes the exemptions for certain amusements, so that a list of all exempt amusements will appear in one place in the statutes. The list includes those amusements that are currently exempted in Article 2, amusements that are listed as exempt in other sections of the statutes, and amusements that are described in other sections of the statutes and that are not currently taxed.

Professionals. G.S. 105-41 imposes a statewide privilege license on persons practicing certain professions or engaging in certain businesses. Section 7 of the Bill makes various clarifying and technical changes to the statute and reorganizes existing exemptions found throughout the statutes so that all exemptions will appear in G.S. 105-41. Currently the statute exempts persons age 75 and over and certain persons practicing the professional art of healing. The Bill adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons is currently set out in another section of Chapter 105, which this bill repeals. Section 8 of the Bill moves from Chapter 105 to Chapter 93B, Occupational Licensing Boards, a provision that exempts any person serving in the armed forces or in the merchant marine from paying license fees to a licensing board or commission or to the State. This exemption belongs in the Occupational Licensing Chapter because it relates to occupational licensing, not to taxes.

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the execution of these instruments, a lien is reserved or taken on personal property located in the State to secure the payment of the obligations. These dealers pay an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations within the preceding quarterly calendar months. Section 9 repeals the $100 license tax. Dealers will continue to pay the quarterly tax.

Banks. Under current law, banks are issued a privilege license each year and pay a tax at the rate of $30 for each $1,000,000 or fractional part of total assets held. These assets are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. Section 10 eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July 1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's current computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks. The Bill also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required

instead to pay a tax on the average of the total assets determined by the number of days in operation.

Alcoholic Beverages. Senate Bill 1252 repeals annual privilege licenses on ABC permittees, raises the ABC permit fees by the corresponding amount, and simplifies the tax rate on malt beverages. In order to engage in a business involving alcoholic beverages, a person must obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue. The person must obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license is mandatory if the applicant has the corresponding ABC permit. The information and qualifications required for the annual State license are the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license serves no purpose other than to raise revenue. The Bill repeals these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses would be offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

Senate Bill 1252 also simplifies the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Currently, an excise tax of 48.387 cents per gallon is assessed against malt beverages in barrels holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon is assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The Bill imposes an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the Bill simplifies the filing and reporting requirements for malt beverages, unfortified wine, and fortified wine by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. This information will now be shown on the invoice.

Other changes. Sections 1, 2, 3, and 5 of the Bill make conforming changes throughout Article 2 to clarify that the Article now deals more with privilege taxes, such as a tax on a business' gross receipts, rather than with license taxes. The only State license taxes that will remain in Article 2 if this Bill is enacted are attorneys-at-law and other professionals ($50.00) (G.S. 105-41) and loan agencies or brokers ($750.00) (G.S. 105-88). These sections of the Bill also eliminate the half-rate license tax for professionals and loan agencies that begin business more than halfway through the year.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1252 (First Edition)

SHORT TITLE: Simplify Privilege License Tax

SPONSOR(S): Senators Hoyle, Cochrane, Kerr, and Hartsell

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
No Half Year License		$14,375	$14,375	$14,375	$14,375
Amusements		**No Impact**			
Banks		1,400	1,400	1,400	1,400
Installment Paper Dealers		(123,800)	(123,800)	(123,800)	(123,800)
ABC Licenses & Permits		**Revenue Neutral**			
Beer Excise Tax		**Revenue Neutral**			
Net Change - G.F. Revenue		**($108,025)**	**($108,025)**	**($108,025)**	**($108,025)**
EXPENDITURES					
General Fund (savings)		**$68,877**	**$71,042**	**$73,346**	**$75,799**
Net Fiscal Impact - GF		**($39,148)**	**($36,983)**	**($34,679)**	**($32,226)**

POSITIONS: Abolish 3 clerical positions in the Department of Revenue beginning FY 99-00.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Alcoholic Beverage Commission

EFFECTIVE DATE: Sections 1 through 13, 27, and 28 (privilege licenses) become effective July 1, 1999 and remaining sections (ABC licenses and permits) become effective May 1, 1999.

BILL SUMMARY: The act repeals the state privilege license taxes for amusements, installment paper dealers, and alcoholic beverages. It changes the privilege tax on new banks and eliminates the proration of license fees for loan agencies and professionals. It creates a uniform malt beverage tax, raises the fee on ABC permits, and simplifies the filing and reporting requirements for alcoholic beverages.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Part (c) of section 2 of the bill ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. Upon passage of this bill, only professionals and loan agencies remain subject to annual license fees. Except for accountants, the Department of Revenue does not have data on the number of licenses that were paid for half year. 675 accountants paid $25 for a half year license in FY 1996-97and 472 bought a half year license in FY 1995-96. Averaging the two years, this note assumes 575 accountants needing a partial year license will pay the full $50 in FY 1999-00. **This will generate a gain to the General Fund of $14,375.**

Sections 4 & 5

In FY 1996-97, there were 323 privilege licenses issued to amusements, circuses, dances, and rodeos generating $17,737 in General Fund income. For this group the license fee serves as advance payment toward the 3% gross receipts tax collected on their performances. Except for the small amount of interest that the Department may earn on license revenue, **there is no fiscal impact from eliminating the annual license fee.**

Section 9

Section 9 eliminates the $100 license fee for installment paper dealers who engage in the business of "dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt". These dealers also pay a tax of .275% of the face value of the financial instruments they handle. Unlike the amusements license, the $100 paid by installment paper dealers is not an advance payment for the tax they pay. **Based on FY 1996-97 collections, this bill will produce a loss of $123,800 annually beginning in FY 1999-00.**

Section 10

Banks pay an annual privilege tax equal to $30 for each million dollars of assets they hold. However, a new bank pays a $100 privilege tax until it has been in operation for a year. This $100 fee is eliminated in section 10 and replaced with a requirement for new banks to pay the regular tax prorated by the number of days it operated during the fiscal year.

According to Ray Grace of the North Carolina Banking Commission, the establishment of new banks is cyclical and influenced both by the economy and by actions of the mega-banks. There were no new banks in 1993 and 1994. There were 2 in 1995 and 3 in 1996. In 1997, there were 10 new banks plus the conversion of a thrift to a bank. Mr. Grace anticipates 6 new banks in 1998.

This note assumes three new banks are established each year and uses FY 1996-97 as a model.

The chart below shows the date each bank was chartered by the Banking Commission in 1996 and the average assets for the three banks in the four quarters of 1996-97. Under this bill, instead of paying $100 in their first year, the banks would pay $30 for each million dollars in assets with an adjustment for the number of days in operation. For example, Bank A would pay $30 x 13.239 ($13,239,250/$1,000,000) x (344 days/365 days) = $374.13

	Established	Avg. Assets	Est. Tax	Current Tax	
Bank A	7/22/96	$13,239,250	$374.13	$100	
Bank B	11/18/96	$30,036,333	$555.06	$100	
Bank C	7/31/96	$28,317,750	$779.00	$100	
			$1,708.19	$300	Difference = $1,408.19

In summary, this note assumes additional revenue of $1,400 per year due to the change in section 10.

Sections 14 - 30

Under current law, a business that sells beer, wine, and/or spirituous liquor is required to secure the appropriate permits from the State Alcoholic Beverage Commission (ABC) and the appropriate commercial and retail licenses from the Department of Revenue. Sections 17 & 18 repeal the Department of Revenue's annual commercial and retail licensing requirements. New businesses filing permit applications with the ABC will no longer have to file a license application with the Department of Revenue. The Department collected an estimated $3.1 million from 40,000 licensees in FY 1996-97. This note assumes the revenue from ABC licenses in FY 1998-99 and beyond would have been $3.3 million per year. To offset this loss, ABC permit fees are increased in sections 29 and 30 of the bill. Using 1996-97 data on the number of ABC permits issued, the ABC worked with the Fiscal Research Division of the General Assembly to propose increased permit fees that would make the repeal of the retail licenses revenue neutral.

Since ABC permits are business specific (malt beverage, fortified wine, etc.), some businesses may be required to hold more than one permit. All ABC permits are continuing except for the brown bagging and the special occasions permits. This means as long as the permittee meets the qualifications of a permit, the permit does not have to be renewed annually. Under the proposed act, all businesses that currently hold licenses and permits prior to May 1, 1999 will not be affected by this act as long as they continue to meet the qualifications of their ABC permit. If an existing business fails to qualify, then they will have to reapply for new ABC permits and pay the higher fees.

By eliminating the processing of 40,000 ABC licenses each year, the Department of Revenue estimates that it could reduce its clerical staff by up to three Grade 57 clerical employees in the Business License & Returns Section of the Office Examination Division. The savings from these positions is $68,877 in FY 1999-00. This amount is adjusted for future growth in wages and fringe benefits.

Section 22

The excise tax rates on beer are combined into a single rate in section 22. Beer sold in barrels is currently taxed at 48.387 cents per gallon and beer sold in bottles and cans is currently taxed at 53.376 cents per gallon. The combined rate of 53.177 cents per gallon preserves the General Fund revenue expected to be collected from both rates. Although the proposal is revenue neutral, those selling beer in bottles and cans will pay a little less tax and those selling beer in barrels will pay a little more. For example, in 1996-97 producers of beer in bottles and cans would have paid $302,252 less in excise tax while producers of beer by the barrel would have paid $302,252 more in excise tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic & Warren Plonk
APPROVED BY:

DATE: June 1, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1252
Proposed Committee Substitute S1252-PCS9511-LA

Short Title: Simplify Privilege License Tax. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2.

"~~Schedule B. License~~ Privilege Taxes."

Section 2. G.S. 105-33 reads as rewritten:

"**§ 105-33. Taxes under this Article.**

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed ~~as State license taxes~~ for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named,~~ named. ~~and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule. Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.~~ License Taxes. -- A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a

fiscal year, begins to engage in an activity for which this Article requires a license. Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) ~~Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.~~ Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

~~(d) The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.~~

(e) Repealed by Session Laws 1989, c. 584, s. 1.

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies, shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege;~~

EXPLANATION OF SENATE BILL 1252 (PCS):
Simplify Privilege License Tax

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 15, 1998
SPONSOR: Senator Hoyle

Senate Bill 1252 is a recommendation of the Revenue Laws Study Committee and makes numerous changes to simplify and/or reduce the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. The Bill also increases ABC permit fees. The changes to the taxes and fees on alcoholic beverages would become effective May 1, 1999. All other changes would become effective July 1, 1999. Explanations of the amendments incorporated in the proposed committee substitute are indicated in bold.

Amusements. The current law imposes an annual $50 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105. The license tax is due July 1 of each year and the tax on gross receipts is due monthly. Taxable forms of entertainment include athletic contests, sporting events, concerts, plays, musicals, night clubs, comedy clubs, amusement parks, carnivals, and festivals. Antique shows, craft shows, and auto shows, when a band is provided or a celebrity signs autographs, are also subject to the tax. Other taxable amusements are fashion shows, beauty pageants, air shows, mud slings, and tractor pulls. Current law also imposes a $50 privilege license tax and gross receipts tax on amusements such as a circus, menagerie, wild west show, a dog and/or pony show, or any other similar amusement not taxed in Article 2. The privilege tax on these amusements is assessed for each day or part of a day that the circus or similar amusement is held. Exempt amusements set out in Article 2 are high school and elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council. **The amendment also exempts all elementary and secondary school dances and other amusements. Current law only exempts the first $1,000 of gross receipts derived from dances and amusements actually promoted and managed by secondary schools when the proceeds are used exclusively for the school and not to defray expenses.**

The State privilege license tax on amusements is treated as an advance payment of the corresponding gross receipts tax, and the license tax is applied as a

credit upon the gross receipts tax. Sections 4 and 5 of the Bill repeal the State privilege license taxes on amusements. This repeal would simplify the taxes assessed on amusements and would be revenue neutral since the license tax is a credit upon the gross receipts tax. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax.

Section 6 reorganizes the exemptions for certain amusements, so that a list of all exempt amusements will appear in one place in the statutes. The list includes those amusements that are currently exempted in Article 2, amusements that are listed as exempt in other sections of the statutes, and amusements that are described in other sections of the statutes and that are not currently taxed.

Professionals. G.S. 105-41 imposes a statewide privilege license on persons practicing certain professions or engaging in certain businesses. Section 7 of the Bill makes various clarifying and technical changes to the statute and reorganizes existing exemptions found throughout the statutes so that all exemptions will appear in G.S. 105-41. Currently the statute exempts persons age 75 and over and certain persons practicing the professional art of healing. The Bill adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons is currently set out in another section of Chapter 105, which this bill repeals. Section 8 of the Bill moves from Chapter 105 to Chapter 93B, Occupational Licensing Boards, a provision that exempts any person serving in the armed forces or in the merchant marine from paying license fees to a licensing board or commission or to the State. This exemption belongs in the Occupational Licensing Chapter because it relates to occupational licensing, not to taxes. **The amendment allows an individual who is serving in the armed forces of the U.S. an extension of time to pay any license fee charged by an occupational licensing board, if the individual qualifies for the extension of time to file a tax return under G.S. 105-249.2. This statute provides that the Secretary of Revenue may not assess interest or penalty against a taxpayer for any period that is disregarded under section 7508 of the IRC in determining the taxpayer's liability for a federal tax. This section of the IRC postpones tax liaibility for an individual serving in the Armed Forces, or serving in support ot the armed forces, in an area designated by the President as a "combat zone". The period of service in such area, plus the period of continuous qualified hospitalization attributable to injury received while serving in the area, and the next 180 days thereafter, are disregarded in determining tax liability.**

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the execution of these instruments, a lien is reserved or taken on personal property located in the State to secure the payment of the obligations. These dealers pay an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations

within the preceding quarterly calendar months. Section 9 repeals the $100 license tax. Dealers will continue to pay the quarterly tax. **The amendment increases the quarterly tax of .275% to .277% to offset the loss of revenue from repealing the annual $100 license tax. According to the Department of Revenue, this increase in rate would cover $112,811 of the $123,800 loss.**

Banks. Under current law, banks are issued a privilege license each year and pay a tax at the rate of $30 for each $1,000,000 or fractional part of total assets held. These assets are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. Section 10 eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July 1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's current computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks. The Bill also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required instead to pay a tax on the average of the total assets determined by the number of days in operation.

Alcoholic Beverages. Senate Bill 1252 repeals annual privilege licenses on ABC permittees, raises the ABC permit fees by the corresponding amount, and simplifies the tax rate on malt beverages. In order to engage in a business involving alcoholic beverages, a person must obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue. The person must obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license is mandatory if the applicant has the corresponding ABC permit. The information and qualifications required for the annual State license are the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license serves no purpose other than to raise revenue. The Bill repeals these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses would be offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

Senate Bill 1252 also simplifies the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Currently, an excise tax of 48.387 cents per gallon is assessed against malt beverages in barrels

holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon is assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The Bill imposes an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the Bill simplifies the filing and reporting requirements for malt beverages, unfortified wine, and fortified wine by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. This information will now be shown on the invoice.

Other changes. Sections 1, 2, 3, and 5 of the Bill make conforming changes throughout Article 2 to clarify that the Article now deals more with privilege taxes, such as a tax on a business' gross receipts, rather than with license taxes. The only State license taxes that will remain in Article 2 if this Bill is enacted are attorneys-at-law and other professionals ($50.00) (G.S. 105-41) and loan agencies or brokers ($750.00) (G.S. 105-88). These sections of the Bill also eliminate the half-rate license tax for professionals and loan agencies that begin business more than halfway through the year.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1252

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

S1252 ALA-001 Page 1 of __

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 3, line 39,
by rewriting the line to read:
"taxed ~~or specifically exempted in~~ under this Article, for which an admission is charged, shall";

and on page 5, line 16 by rewriting the line to read:
"~~etc.~~ Circuses and other traveling amusements.";

and on page 7, lines 21 and 25, by deleting the phrase "North Carolina".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1252 (Second Edition)

SHORT TITLE: Simplify Privilege License Tax

SPONSOR(S): Senators Hoyle, Cochrane, Kerr, and Hartsell

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
No Half Year License		$14,375	$14,375	$14,375	$14,375
Amusements		**No Impact**			
Banks		1,400	1,400	1,400	1,400
Installment Paper Dealers		(10,990)	(10,990)	(10,990)	(10,990)
ABC Licenses & Permits		**Revenue Neutral**			
Beer Excise Tax		**Revenue Neutral**			
Net Change - G.F. Revenue		**$4,785**	**$4,785**	**$4,785**	**$4,785**
EXPENDITURES					
General Fund (savings)		**$68,877**	**$71,042**	**$73,346**	**$75,799**
Net Fiscal Impact - GF		**$73,662**	**$75,827**	**$78,131**	**$80,584**

POSITIONS: Abolish 3 clerical positions in the Department of Revenue beginning FY 99-00.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Alcoholic Beverage Commission

EFFECTIVE DATE: Sections 1 through 13, 27, and 28 (privilege licenses) become effective July 1, 1999 and remaining sections (ABC licenses and permits) become effective May 1, 1999.

BILL SUMMARY: The act repeals the state privilege license taxes for amusements, installment paper dealers, and alcoholic beverages. It increases the tax on tax on installment paper dealers from .275% to .277%. It changes the privilege tax on new banks and eliminates the proration of license fees for loan agencies and professionals. It creates a uniform malt beverage tax, raises the fee on ABC permits, and simplifies the filing and reporting requirements for alcoholic beverages.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Part (c) of section 2 of the bill ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. Upon passage of this bill, only professionals and loan agencies remain subject to annual license fees. Except for accountants, the Department of Revenue does not have data on the number of licenses that were paid for half year. 675 accountants paid $25 for a half year license in FY 1996-97and 472 bought a half year license in FY 1995-96. Averaging the two years, this note assumes 575 accountants needing a partial year license will pay the full $50 in FY 1999-00. **This will generate a revenue gain to the General Fund of $14,375.**

Sections 4 & 5

In FY 1996-97, there were 323 privilege licenses issued to amusements, circuses, dances, and rodeos generating $17,737 in General Fund income. For this group the license fee serves as advance payment toward the 3% gross receipts tax collected on their performances. Except for the small amount of interest that the Department may earn on license revenue, **there is no fiscal impact from eliminating the annual license fee.**

Section 9

Section 9 eliminates the $100 license fee for installment paper dealers who engage in the business of "dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt". Unlike the amusements license, the $100 paid by installment paper dealers is not an advance payment for the tax they pay. Based on FY 1996-97 collections, this change will produce a loss of $123,800 annually beginning in FY 1999-00. These dealers also pay a tax of .275% of the face value of the financial instruments they handle. To offset the revenue loss, this tax rate is increased to .277% to raise $112,810. **The net revenue impact from eliminating the $100 fee and increasing the tax rate to .277% is a revenue loss of $10,990.**

Section 10

Banks pay an annual privilege tax equal to $30 for each million dollars of assets they hold. However, a new bank pays a $100 privilege tax until it has been in operation for a year. This $100 fee is eliminated in section 10 and replaced with a requirement for new banks to pay the regular tax prorated by the number of days it operated during the fiscal year.

According to Ray Grace of the North Carolina Banking Commission, the establishment of new banks is cyclical and influenced both by the economy and by actions of the mega-banks. There were no new banks in 1993 and 1994. There were 2 in 1995 and 3 in 1996. In 1997, there were 10 new banks plus the conversion of a thrift to a bank. Mr. Grace anticipates 6 new banks in 1998.

This note assumes three new banks are established each year and uses FY 1996-97 as a model. The chart below shows the date each bank was chartered by the Banking Commission in 1996 and the average assets for the three banks in the four quarters of 1996-97. Under this bill, instead of paying $100 in their first year, the banks would pay $30 for each million dollars in assets with an adjustment for the number of days in operation. For example, Bank A would pay $30 x 13.239 ($13,239,250/$1,000,000) x (344 days/365 days) = $374.13

	Established	Avg. Assets	Est. Tax	Current Tax	
Bank A	7/22/96	$13,239,250	$374.13	$100	
Bank B	11/18/96	$30,036,333	$555.06	$100	
Bank C	7/31/96	$28,317,750	$779.00	$100	
			$1,708.19	$300	Difference = $1,408.19

In summary, this note assumes additional revenue of $1,400 per year due to the change in section 10.

Sections 14 - 30

Under current law, a business that sells beer, wine, and/or spirituous liquor is required to secure the appropriate permits from the State Alcoholic Beverage Commission (ABC) and the appropriate commercial and retail licenses from the Department of Revenue. Sections 17 & 18 repeal the Department of Revenue's annual commercial and retail licensing requirements. New businesses filing permit applications with the ABC will no longer have to file a license application with the Department of Revenue. The Department collected an estimated $3.1 million from 40,000 licensees in FY 1996-97. This note assumes the revenue from ABC licenses in FY 1998-99 and beyond would have been $3.3 million per year. To offset this loss, ABC permit fees are increased in sections 29 and 30 of the bill. Using 1996-97 data on the number of ABC permits issued, the ABC worked with the Fiscal Research Division of the General Assembly to propose increased permit fees that would make the repeal of the retail licenses revenue neutral.

Since ABC permits are business specific (malt beverage, fortified wine, etc.), some businesses may be required to hold more than one permit. All ABC permits are continuing except for the brown bagging and the special occasions permits. This means as long as the permittee meets the qualifications of a permit, the permit does not have to be renewed annually. Under the proposed act, all businesses that currently hold licenses and permits prior to May 1, 1999 will not be affected by this act as long as they continue to meet the qualifications of their ABC permit. If an existing business fails to qualify, then they will have to reapply for new ABC permits and pay the higher fees.

By eliminating the processing of 40,000 ABC licenses each year, the Department of Revenue estimates that it could reduce its clerical staff by up to three Grade 57 clerical employees in the Business License & Returns Section of the Office Examination Division. The savings from these positions is $68,877 in FY 1999-00. This amount is adjusted for future growth in wages and fringe benefits.

Section 22

The excise tax rates on beer are combined into a single rate in section 22. Beer sold in barrels is currently taxed at 48.387 cents per gallon and beer sold in bottles and cans is currently taxed at 53.376 cents per gallon. The combined rate of 53.177 cents per gallon preserves the General Fund revenue expected to be collected from both rates. Although the proposal is revenue neutral, those selling beer in bottles and cans will pay a little less tax and those selling beer in barrels will pay a little more. For example, in 1996-97 producers of beer in bottles and cans would have paid $302,252 less in excise tax while producers of beer by the barrel would have paid $302,252 more in excise tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic & Warren Plonk
APPROVED BY: Tom Covington

DATE: June 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1354

Short Title: Bonds/Critical Infrastructure Needs. (Public)

Sponsors: Senators Kerr; Albertson, Ballance, Ballantine, Carpenter, Carrington, Cochrane, Cooper, Dalton, East, Forrester, Garwood, Gulley, Hartsell, Hoyle, Jenkins, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Odom, Page, Perdue, Phillips, Plyler, Purcell, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS CRITICAL STATEWIDE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS, LOANS, AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, WATER CONSERVATION PROJECTS, AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(1) $465,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to

provide funding by grants to local government units for wastewater treatment and water supply distribution needs.

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, and water conservation and water reuse projects.

(3) $100,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means a numerical rating of a unit of local government developed by the North Carolina Municipal Council, Inc. The rating formula is based on 100 being a theoretically 'perfect' unit of government and is an assessment of the creditworthiness of the unit. Units of local government with rating below 75 or with no ratings are generally considered to be 'nonbank eligible' and such communities therefore have limited, if any access to the private market for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan,

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1354
Proposed Committee Substitute S1354-PCSX7999-LH

Short Title: Bonds/Critical Infrastructure Needs. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS CRITICAL STATEWIDE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, WATER CONSERVATION PROJECTS, AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

(1) $485,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to

provide funding by grants to local government units for wastewater treatment and water supply and distribution needs.

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, and water conservation and water reuse projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on achieving stringent reductions in the levels of nutrients and other pollutants discharged into the State's waters, particularly in nutrient sensitive river basins, in reducing the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible, on the creation of efficient systems of regional wastewater disposal and regional water supply, and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management. In addition, great emphasis shall also be placed on the protection and improvement of fisheries habitats for both saltwater and freshwater fish based upon recommendations made by the Director of the Marine Fisheries Division of the Department of Environment and Natural Resources.

(b) Natural Gas Bonds.

$150,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically 'perfect' unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a

North Carolina Sewer moratoriums, special orders of consent, and discharges greater than or equal to 80 percent of discharge capacity (defacto moratorium)

As of May 1998

Facility	*County*
1. Bakersville	Mitchell
2. Bath	Beaufort
3. Bay River MSD/Pam. CO/Oriental	Pamlico
4. Beech Mountain-Grassy Gap	Avery/Watauga
5. Belhaven	Beaufort
6. Benson	Johnston
7. Bessemer City	Gaston
8. Bethel	Pitt
9. Beulaville	Duplin
10. Bladenboro	Bladen
11. Blue Creek Utilities	Onslow
12. Boiling Springs	Cleveland
13. Boone	Watauga
14. Bridgeton	Craven
15. Buies Creek	Harnett
16. Burgaw	Pender
17. Carolina Beach	New Hanover
18. Chadbourn	Columbus
19. Claremont	Catawba
20. Clarkton	Bladen
21. Clyde	Haywood
22. CMUD-Mallard Creek	Mecklenburg
23. Denton	Davidson
24. Dobson	Surry
25. Dunn	Harnett
26. Elizabeth City	Pasquotank/Camden
27. Elizabethtown	Bladen
28. Elkin	Surry/Wilkes
29. Elm City	Wilson
30. Enfield	Halifax
31. Eureka	Wayne
32. Fair Bluff	Columbus
33. Fairmont	Robeson
34. Faison	Duplin
35. Franklin	Macon
36. Fremont	Wayne
37. Gastonia (Long Creek)	Gaston
38. Gibson	Scotland

North Carolina Sewer moratoriums, special orders of consent, and discharges greater than or equal to 80 percent of discharge capacity (defacto moratorium)

As of May 1998

39. Goldsboro	Wayne
40. Greater Badin	Stanly
41. Greensboro-N. Buffalo and Metro	Guilford
Facility	***County***
42. Halifax	Halifax
43. Havelock	Craven
44. Hayesville.	Clay
45. Henderson	Vance
46. Hendersonville	Henderson
47. Hertford	Perquimans
48. High Shoals-River Street	Gaston/Lincoln
49. Holly Ridge	Onslow
50. Jacksonville	Onslow
51. Jefferson	Ashe
52. Kenansville	Duplin
53. Lenoir-Lower Creek	Caldwell
54. Middlesex	Nash
55. Mocksville-Bear Creek	Davie
56. Monroe	Union
57. Morehead City	Carteret
58. Morganton	Burke
59. Mount Gilead	Montgomery
60. Mount Olive	Wayne/Duplin
61. Murphy	Cherokee
62. Neuse RiverW&S (James City)	Craven
63. Neuse River W&S (NW Craven)	Craven
64. N. Wilkesboro	Wilkes
65. Oakboro	Stanly
66. OWASA-Mason Farm	Orange
67. Pinetops	Edgecombe
68. PWC/Fayetteville (Rockfish Creek)	Cumberland
69. Ranlo	Gaston
70. Reidsville	Rockingham
71. Rockingham	Richmond
72. Rockingham CO. Regional Sys.	Rockingham
73. RoCRS-Madison	Rockingham

North Carolina Senate • Legislative Building #2007 • Raleigh, NC 27601-2808 • (919) 733-6854 • Fax: (919) 733-8740

North Carolina Sewer moratoriums, special orders of consent, and discharges greater than or equal to 80 percent of discharge capacity (defacto moratorium)

As of May 1998

74. RoCRS-Mayodan	Rockingham
75. RoCRS-Stoneville	Rockingham
76. Rowland	Robeson
77. Seaboard	Northampton
78. Snow Hill	Greene
79. Spindale	Rutherford
80. Spruce Pine	Mitchell
81. Stanley	Gaston
82. Taylorsville	Alexander
83. Walstonburg	Greene
84. Warsaw	Duplin
85. Washington	Beaufort
86. Weldon	Halifax
87. West Jefferson	Ashe
88. Whiteville	Columbus
89. Wilson	Wilson
90. Winston-Salem: Lower Muddy Crk.	Forsyth
91. Yadkinville	Yadkin
92. Yaupon Beach	Brunswick

Implementation Guidelines
Proposed Funding
SB 1354 - Bonds/Critical Infrastructure Needs

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Clean Water Revolving Loan and Grant Fund	Grants to local governments for water supply systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects	$330 Million	Local government unit High unit cost project (would require estimated average household water and sewer user fees greater than 1.5% of the median household income of the local government unit.) Compliance with federal, State, and local laws. Agree to adopt and effect fee schedule to provide for proper operation, maintenance, and administration of project.	- Nutrient/pollutant reduction - Protection of fisheries habitats - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital improvement plan	$3 Million per project
State Match for Federal Funds	Match required to draw down federal funds for the Clean Water Revolving Loan and Grant Fund	$35 Million ($7 Million a year)	Same as for Clean Water Revolving Loan and Grant Fund	Same as for Clean Water Revolving Loan and Grant Fund	Same as for Clean Water Revolving Loan and Grant Fund
Unsewered Community Grants	Funds to provide centralized public sewer treatment and/or collection to unserved areas	$50 Million ($10 Million Per Year)	- Local government unit - Population less than 3,500 - Unsewered - MHI less than80% of national MIII - Public necessity	- Nutrient/pollutant reduction - Protection of fisheries habitats - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital improvement plan	90% (rates at 1 1/2% MHHI)
Supplemental Grants	Funds to assist in financing a needed water or sewer infrastructure project	($40 Million Per Year) for Five	- Local Government unit - Economically depressed area or meet non-distressed criteria	- Nutrient/pollutant reduction - Protection of fisheries habitats	50%

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Continued Supplemental Grants		Years	(p.14) - Located in a rural county - Job creation or retention - Eliminates health threat - Public necessity	- Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital Improvement Plan	
Capacity Grants	Funds to produce a grant or loan application for funding a required water/sewer improvement or to produce a capital improvement plan as required for receipt of bond funds	($10 Million Per Year For Five Years)	Same	- Nutrient/pollutant reduction - Protection of fisheries habitats - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital Improvement Plan	Same
Industrial Development Fund	Water and Sewer lines for Industrial Buildings	$10 Million	- Grants to local governments - Economically distressed counties - Major economic dislocation - Manufacturing only - New jobs must directly result	- No match for tier one counties. - Commerce proposes to expand to new industries, and increase funding amounts	Maximum $400,000 per project and $4,000 per new job
Utility Account of Industrial Development Fund	Water and Sewer lines for Industrial Buildings	$10 Million	- Grants to local governments - Tier one counties only - Manufacturing, warehousing & - wholesale trade, & data processing - New jobs must directly result	- Commerce proposes to expand to tier two counties - Commerce proposes to expand to other industries	No maximum per project or per job.
Clean Water Loans	Loans to local government units for water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works	$320 Million	Local government unit Bond rating Water supply facility plan approved by DENR if water supply loan Wastewater facility plan approved by DENR if wastewater treatment works loan Capital improvement plan Financial capacity to repay loan	- Nutrient/pollutant reduction - Protection of fisheries habitats - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital improvement plan	No maximum per loan.

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Continued Clean Water Loans			Compliance with federal, State, and local laws Agree to adopt and effect fee schedule to provide for proper operation, maintenance, and administration of project.		
Natural Gas	Provide additional funding methods for natural gas expansion to unserved or underserved counties	$150 Million (plus any future appropria-tions)	Utilities Commission makes final project decision. Area must be unserved and project must be economically infeasible. Applicant can be existing franchise holder, new franchise applicant, or gas district	Scope of project, number of unserved counties involved, total cost, economic feasibility, other factors affecting the public interest	Depends on economic infeasibility

Senate Bill 1354
Proposed Committee Substitute S1354-CSLX-6/10
Bonds/Critical Infrastructure Needs
Explanation – 6/11/98

The proposed committee substitute (PCS) authorizes the issuance of general obligation bonds in the amount of $955 million, subject to approval by the voters in a bond referendum, for $805 million in grants and loans to local governments for water supply systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects and for $150 million in grants, loans, and other financing to public or private entities for the construction of natural gas facilities.

The PCS provides that the bond referendum will be held November 3, 1998. Two separate questions will appear on the ballot—one for the authorization of clean water bonds and one for the authorization of natural gas bonds.

The PCS provides for the allocation of the bond proceeds as follows:

Total:	**$955 million**
A. State water/sewer grants for local governments.	**$485 million**
Administered by DENR	
1. Wastewater:	
• less than 75 bond rating or no bond rating	$ 85 million
• at least or equals 75 bond rating	$ 80 million
2. Water Supply:	
• less than 75 bond rating or no bond rating	$ 85 million
• at least or equals 75 bond rating	$ 80 million
3. State match for EPA loan funds:	$ 35 million
• $ 7 million/year for five years	
Administered by Rural Economic Development Center	
4. Supplemental and capacity building grants: To meet local match requirements for infrastructure projects related to economic development in depressed areas.	$ 50 million
5. Grants for unsewered communities:	$ 50 million
Administered by Department of Commerce	$ 20 million
6. Infrastructure funding for industries in economically depressed counties.	
B. Water/sewer loan funds for local governments.	**$320 million**
(Direct loans/State pass-through bonds)	

1. Wastewater:
   less than 75 bond rating — $ 10 million
   at least or equals 75 bond rating — $150 million
2. Water Supply:
   less than 75 bond rating — $ 10 million
   at least or equals 75 bond rating — $150 million

C. Natural gas service. — **$150 million**
Extend natural gas service to the remaining 22 unserved counties.*

Section-by-Section Analysis

Section 1. Short title is Clean Water and Natural Gas Bond Act of 1998.

Section 2. Purpose of the PCS is to authorize nine hundred fifty-five million dollars in general obligation bonds. The bond proceeds are to be allocated as follows:

(a) Clean Water Bonds
(1) $485 million to provide State matching funds for federal moneys and to provide grants to local government units for water and sewer needs.
(2) $320 million to provide loans to local government units for water and sewer needs.

(b) Natural Gas Bonds
$150 million to provide grants, loans, or other financing to natural gas distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions are set out.

Section 4. Bond bill "boiler plate" language. Authorizes the State Treasurer to issue and sell at any time Clean Water Bonds, subject to a favorable vote of the people. Also authorizes the State Treasurer to issue and sell at any time Natural Gas Bonds, subject to a favorable vote of the people.

Section 5. Specifies what the bond proceeds may be used for and the amount of bond proceeds that may be used for each purpose. The two main purposes are (i) water and sewer needs (Clean Water Bonds) and (ii) natural gas needs (Natural Gas Bonds).

The Clean Water Bond proceeds ($805 million) are divided into two categories, one for grants and one for loans.

Water/Sewer Grants ($485 million)

The total amount of bond proceeds that is to be used for grants to local governments is $485 million and is allocated among the Department of Environment

*Counties not likely to be served in the next two years

and Natural Resources, the Rural Economic Development Center, and the Department of Commerce.

The Department of Environment and Natural Resources is to use $365 million in bond proceeds for high unit wastewater grants under the Clean Water Revolving Loan and Grant Fund, for high unit water supply grants under the Clean Water Revolving Loan and Grant Fund, and to match federal funds in compliance with the statutory provisions of the Clean Water Revolving Grant and Loan Fund.

The Rural Economic Development Center is to use $50 million as grants to local government units that are "unsewered communities" to assist with financing of wastewater treatment works and wastewater collection systems.

The Rural Economic Development Center is to use $50 million as supplemental and capacity grants to local government units in compliance with the criteria set out in subdivision (3). (See pages 13-14 of the PCS.) Of the $50 million in bond proceeds, $40 million is allocated for supplemental grants and $10 million is allocated for capacity grants. However, no more than a total of $10 million in bond proceeds ($8 million limit on supplemental grants and $2 million limit on capacity grants) may be used in any fiscal year.

The criteria for the grants to be administered by the Rural Economic Development Center is set out. An annual review by the Secretary of Commerce to verify compliance by the Rural Economic Development Center with the legislative criteria for grants is required, and certain documentation and records regarding those same grants must be provided to the Department of Commerce.

The Department of Commerce is to use $20 million as grants for water and sewer, $10 million to be administered in the same manner as funds in the Industrial Development Fund and $10 million to be administered in the same manner as funds in the Utility Account of the Industrial Development Fund.

Water/Sewer Loans ($320 million)

The total amount of bond proceeds that is to be used for loans to local governments is $320 million. Those proceeds are allocated to the Department of Environment and Natural Resources to be loaned out in compliance with the statutory criteria under the Revolving Loan and Grant Fund, but not as revolving loans. The repayment of the loans is to be credited to the General Fund and may be used for debt service on the bonds.

A final provision under the Clean Water Bond portion of this section provides that the General Assembly may increase or decrease allocations of the bond proceeds for clean water purposes, provided the aggregate amount of the allocations does not exceed $805 million.

Natural Gas Financing ($150 million)

The total amount of proceeds that is to be used for natural gas needs is $150 million. Those proceeds may be used to provide any type of financing to natural gas local distribution companies, private entity, public entity or person seeking natural gas distribution franchises for the construction of natural gas facilities. The bond proceeds are to be expended under the direction and

supervision of the Director of the Budget. The North Carolina Utilities Commission must report quarterly to the Join Legislative Commission on governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

Section 6. Bond bill "boiler plate" language. Provides technical provisions governing allocation and disbursement of bond proceeds.

Section 7. Provides that the bond referendum shall be held on the first Tuesday after the first Monday of November 1998. There are two separate questions, one addressing whether $805 million in general obligation bonds should be issued to make loans and grants to local governments to pay for all or part of the cost of clean water projects, and one addressing whether $150 million in general obligation bonds should be issued to provide grants, loans, or other financing to public or private entities for the construction of natural gas facilities.

Section 8. Bond bill "boiler plate" language. Provides technical provisions governing bonds, including terms, form, manner of sale, refunding bonds, etc.

Section 9. Bond bill "boiler plate" language. Provides technical provisions governing credit facilities, variable interest rates, redemption, and remarketing.

Section 10. Sets out special provisions and additional criteria governing clean water loans. Provides that the section applies only to loans that are not made from the Clean Water Revolving Loan and Grant Fund. Creates a special Clean Water Bonds Loan Fund for the bond proceeds that are to be used to make loans. Provides that interest on the proceeds may be used for loans for the purposes indicated in the PCS. Sets out the criteria that must be met to qualify for a loan and the procedures that must be followed both to apply for the loan and to award the loan including hearings and the opportunity for voters to petition for a vote. Authorizes the State to intercept State funds otherwise distributable to a local unit if the unit fails to repay its loan. Allows inspection by DENR personnel or qualified engineers of a project for which a loan has been made. Authorizes the State Treasurer, the Local Government Commission, and DENR to adopt, modify, and appeal rules as necessary for administration of their various duties. Also includes a reporting requirement.

Section 11. Sets out reporting requirements for the Rural Economic Development Center, the Department of Commerce, and the Department of Environment and Natural Resources regarding grants awarded from bond proceeds.

Section 12. Requires the Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center to monitor compliance with goals for participation by minority businesses with regard to projects funded by bond proceeds.

Section 13. "Boilerplate language" governing interpretation of the act.

Section 14. Establishes the State Infrastructure Council. The Council is charged with developing a strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs. The Council consists of 17 members, 12 appointed members and 5 ex officio members. Of the 12 appointed members, four are appointed by the Governor, four are appointed by the President

Pro Tempore of the Senate, and four are appointed by the Speaker of the House of Representatives. The five ex officio members are the Secretary of Commerce, the Secretary of Environment and Natural Resources, the State Treasurer, the Executive Director of the League of Municipalities, and the Executive Director of the County Commissioners Association. The Governor appoints the Chair from the members biennially. The Department of Environment and Natural Resources must provide office space and staff as requested by the Council. The Council must report annually to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division regarding its progress in carrying out its charge. This section becomes effective only if the bond referendum passes.

Section 15. Amends G.S. 159G-6 to increase the cap on the total amount of any loan made from the Clean Water Revolving Loan and Grant Fund from three million dollars to ten million dollars and to increase the cap on the total amount of any grant made from the Clean Water Revolving Loan Grant Fund from one million dollars to three million dollars. Further amends G.S. 159G-6(b) to revise the grant eligibility threshold to 1.5 percent of the median household income of the unit rather than the county. Also makes a technical correction. This section becomes effective only if the bond referendum passes.

Section 16. Provides legislative findings stating the need for additional funding methods, including appropriations and bond proceeds, to facilitate the expansion of natural gas service to unserved areas of the State where such expansion may not be economically feasible with traditional funding methods.

Section 17. Creates new G.S. 62-159 authorizing the Utilities Commission to provide funding for the expansion of natural gas service to unserved areas of the State through appropriations or bond proceeds for the construction of natural gas facilities that it would otherwise not be economically feasible to construct. Provides criteria for the Commission to consider in determining whether to approve the use of funds for a particular project. Provides for a recipient to return project funds to the Commission in the event that the project is later determined to be economically feasible and for returned funds to be used for other expansion projects.

Authorizes the Utilities Commission to cancel an existing franchise and grant a recipient of expansion funds a new exclusive franchise if the public interest requires it. Requires the Commission to report to the Joint Legislative Utility Review Committee on the use of expansion funding.

Section 18. Amends the policy statement in G.S. 62-2 to allow for more than one expansion fund to be established in order to facilitate the expansion of natural gas service to unserved areas of the State.

Section 19. Effective date. With the exception of Sections 14 and 15, the act is effective when it becomes law. Sections 14 and 15 become effective only if the bond referendum passes. The Utilities Commission must immediately begin rulemaking process when the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1354 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Blust
Sen.)

moves to amend the bill on page 6, lines 38-39
( ) WHICH CHANGES THE TITLE and page 7, lines 4-5, and page 8, lines 7-8,
by deleting "three hundred sixty-five million dollars ($365,000,000)" and
substituting "four hundred sixty-five million dollars ($465,000,000)", each place;

and on page 8, lines 39, through page 13, line 3,
by rewriting the lines to read:
"(2) Reserved.
(3) Reserved.";

and on page 7, line 6,
by deleting "three hundred thirty million dollars ($330,000,000)" and
substituting "four hundred thirty million dollars ($430,000,000)";

and on page 7, lines 11 and 17,
by deleting "$85,000,000" and substituting "$110,000,000";

and on page 7, lines 13 and 19,
by deleting "$80,000,000" and substituting "$105,000,000".

SIGNED John Blust

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1354 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE A866

Rep.)
) Foxx
Sen.)

1 moves to amend the bill on page 11, line 9
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "First" and substituting "Second";
4
5 and on page 11, line 11,
6 by deleting "Second" and substituting "First".
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Virginia Foxx

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-16-98 (Noon)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dave Simpson	Carolinas ABC
Bill McAulay	PSNC
Stu Dixon	NCNG
Joe Pennacchia	Piedmont Natural Gas Co.
Bucky Daniel	DOR
Sabra Faires	Dept of Revenue
Jay Hare	DOR
R. Paul Wilms	NCMBA
Jay Rouse	NC Beer & Wine Wholesalers
Rick Dobs	WSCR
Katie Adams	CCNC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-16-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	N.C. Assoc. County Commissioners
Ed Regan	" " " "
David Simmons	ZDA, PA
[illegible]	NCCP
Larry Heckner	Household Financial Group
[illegible]	Moore & Van Allen
C. Parker	Bone & Assoc.
[illegible]	OSBM
Amy Jo Bain	Smith Anderson
Ed Harrell	DENR
Cindy Finan	NC American Water Works Assoc. + Water Env. Assoc.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-16-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meghan Moore	Sierra Club NC
David Knight	NC Sierra Club, NC APA
Nat Ward	Conservation Council of NC
ARTHUR KENNEDY	The Wooten Company
Leura DeVivo	DENR
Cam Cover	BPMHL
Alan Miles	Bailey & Dixon LLP
Leslie Bulwagen	NCCBI
Nancy Bradley	NCCBI
John Long	Martin Marietta
BILL SCOGGIN	NC BAR ASSOC.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-16-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Billy Ray Hall	NC Rural Center
Jean Preuss Klein	" " "
Tom Bean	NC Wildlife Federation
Lon McArthur	Moore + Van Allen
Chris Hoyt	Electric Coops

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, June 16, 1998

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

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

S.B. **1252** Simplify Privilege License Tax

Draft Number:	PCS9511-LA
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 17, 1998

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

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

S.B. **1354** Bonds/Critical Infrastructure Needs

Draft Number:	PCSX7999
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1354 in 6-16-98 Meeting

JOINT SENATE AND HOUSE FINANCE COMMITTEE

TUESDAY, JUNE 16, 1998

3:00 P.M. - ROOM 643 LOB

There was a Joint Meeting of Senate and House Finance Committees on Tuesday, June 16, 1998 at 3:00 P. M. in Room 643 in the Legislative Office Building. There were 21 members of the Senate Finance Committee present. Senator David Hoyle, Co-chairman of the Senate Finance Committee and Representative Lyons Gray, Co-chairman of the House Finance Committee, presiding.

The purpose of this meeting was to hear from Secretary Rick Carlisle of the Department of Commerce on **H. B. 1688 AND S. B. 1569 ECONOMIC OPPORTUNITY ACT OF 1998**

NOTE:

Minutes of this Meeting are Attachment #1
Visitors Sign In Sheet are Attachment #2

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

(Attachment #1)

MINUTES

JOINT MEETING WITH SENATE

COMMITTEE ON FINANCE

TUESDAY, JUNE 16, 1998

3:00 P.M. ROOM 643-LOB

The House and Senate Committee on Finance and Appropriations met on Wednesday afternoon, June 16, 1998 at 3:00 p.m. in Room 643-LOB. A silent roll was taken for membership, (roll list denotes members present).

Rep. L. Gray and Sen. D. Hoyle co-chaired the joint meeting. Rep. Gray called the meeting to order and welcomed members and guests.

HB-1688 ECONOMIC OPPORTUNITY ACT OF 1998
SB-1569 ECONOMIC OPPORTUNITY ACT OF 1988

Mr. Rick Carlisle, Secretary of Commerce presented a slide presentation (copy attached). Ms. Martha Harris, Bill Drafting Division, gave the explanation. Sen. L. Shaw asked a series of questions regarding tiering of counties. Ms. Harris and Sec. Carlisle responded. Sen. Ballentine questioned development zones requirements and Sec. Carlisle answered his inquiry. Mr. David Crotts, Fiscal Research Division, presented the fiscal note explanation. Rep. Luebke asked about jet fuel and Mr. Crotts advised it had been eliminated from the bill. Sen. Kerr commented on the bill. Sen. Hoyle questioned the economic return figures for NuCor and FedEx. Sec. Carlisle responded. Sen. B. Shaw inquired about the benefits of NuCor employees and questioned hiring of people from across the Virginia line. Sec. Carlisle again responded. Rep. Redwine questioned Page 20 regarding tax dollars for infrastructure and investments. Again, Sec. Carlisle provided an answer. Sen. Hoyle followed up on the remarks of Sen. Shaw regarding the hiring of North Carolina citizens. Ms. Harris made additional remarks. Sen. L. Shaw commended the Department of Correction for their work on this issue. Sen. B. Shaw remarked on who will be investing the money in Greensboro. Sec. Carlisle responded to his comments. Sen. Hoyle addressed Sen. L. Shaw's questions/comments. Sen. Blust shared questions of concern regarding the property tax exclusion and the fact that tax exclusions could not continue over a period of years. He feels we should take a broad look at the tax problems of the future. Sen. Hoyle agreed with some of his comments and made additional remarks regarding what will be best for our state. Rep. Cunningham questioned Rep. H. Hunter in regards to the number of North

Carolinians that drive to Virginia each day from his district. Rep. Hunter responded. Sen. McDaniel, and Sen. Kerr spoke. Rep. Owens spoke in favor of the bill and the importance of economic development for North Carolina. Rep. Berry had a series of questions for Sec. Carlisle and he responded. Rep. Hunter questioned the Board of Economic Development for state enterprise zones. Sec. Carlisle spoke on the Board endorsements. Sen. B. Shaw shared additional concerns. Sen. Ballance spoke in favor of this being an opportunity for our citizens. Rep. Womble questioned the credits portions of the bill. Mr. David Crotts replied. He also asked for data regarding employment and Chairman Gray advised that DOC could provide this information for him. Rep. Luebke asked how to review low income family studies in tier counties. Sec. Carlisle explained. Sen. Phillips spoke on economic development in his District and he supports this legislation because his county will prosper in the long range plan from this. Sen. Allran followed up on comments made in earlier discussion. He would like to know the unemployment rates for his District, what effects this will have on traffic and will the jobs created in Guilford County be low or high paying jobs to attract people from other states. Sec. Carlisle replied that the Employment Security Commission maintains data on unemployment. He further addressed comments regarding unemployment and that the jobs are being provided for our North Carolina citizens. Rep. Jarrell questioned the fiscal impact for Guilford County and Mr. Crotts responded. Sen. Hoyle spoke again in favor of the bill and announced that the Senate Finance Committee would continue discussion on this issue at their noon meeting on Thursday, June 17, 1998.

The meeting adjourned at 5:30 p.m.

Rep. L. Gray, Co-chairman

Sen. D. Hoyle, Co-chairman

Cindy Brooks, Committee Clerk

Penny Williams, Committee Clerk

(Attachment #2)

VISITOR REGISTRATION SHEET Jt Mtg.

Senate Finance
Name of Committee

June 16, 1998
Date

3-5 pm
Room 643

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paula L. Wolf	Covenant with NC's Children
Jim Brown	N.C. State Ports
Chris Fitzsimon	Common Sense Foundation
Carol Cover	BPMHL
AMY JO BAIN	SMITH ANDERSON
Michelle Cook	Weyerhaeuser
Bill Bak	E & Y
Greg Radford	DOR
Sandra Deer	DOR
Charles Collie	DOR
Patti Seawell	DOR
Mary Nunnelee	Poyner & Spruill

VISITOR REGISTRATION SHEET

House Finance — June 16, 1988 — 3-5 p.m.

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Osra Levinsohn	N.C. Center For Public Policy Research
Lee Kindleberg	Hoechst Celanese
Laura Hartsell	MCIC
Joe Parker	GHSP
Don Craft	Hertford County manager
Edythe McKinney	Dept of En & Nat Resources
Betty David	DOR
Debra Warren	DOR
John Bass	DOR
Kathy Pilgreen	NCGTP Region
Linda Bray	NCDOC
Shaheen Bandukwala	Senator Bob Shaw's Office
Liz Harris	Winston-Salem Chamber of Commerce

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Hap Chalmers	N. C. Power
Michael Thompson	NCPower
Doug Miskew	IBM
Tommy Hamilton	Hamilton Consulting
Mary Carmilia	Mecklenburg County
	UCSR
Penny Whitehead	Greensboro Area Chamber of Commerce
JOHN GREENLEAF	" " " "
MIKE MORGAN	FEDEX
Brandon Arapale	N. C. Dept. of Commerce
	NCDOC
Marilyn Johnson	NCDOC

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kirsten Weeks	NC Dept. of Commerce
Ted Johnson	Piedmont Triad Airport Auth.
Rob Schofield	NC Justice Ctr.
Hubbell Christopher	Piedmont Triad Airport
Gloria Escontrias	FedEx
Janet L. Mitchum	FDX Corp.
Bill Cooke	Piedmont Triad Airport
CHARLES ARCHER	HALIFAX COUNTY MANAGER
Tamara Hollingsworth	Office of the Gov.
Linwood Cox	NCMSC
Rachel S. Barron	Flynt + Assoc., Winston-Salem
Doug Buttrey	FDX CORP. MEMPHIS, TN

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bob Palmer	Fed Ex, Indpls. In.
Rhonda Raney	NC AFDC
Dave Dawson	NCDOC
Mattie Hawkins	Charlotte Chamber
Cathrine Davis	Electricities of NC
Yolanda Winstead	Downtown Housing Improvement Corp.
Gregg Warren	Downtown Housing Improvement Corp.
C. Parker	Bone & Associates.
Andy Lomenet	N.C.L.M.
Ann Case	NCDMA
Ed Regan	N.C.A.C.C.
Trudi Walend	visitor

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hegarty	Electric co-op's

1998

SENATE FINANCE COMMITTEE

MINUTES

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 17, 1998

12 NOON - ROOM 544

SB 1569 - Economic Opportunity Act of 1998 - Senator Hoyle

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 17, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Wednesday, June 17, 1998, at 12 noon in Room 544 with Senator Kerr presiding. There were 26 members present. Pages assisting in the committee meeting were Chad Baucom from Charlotte, sponsored by Senator Rucho, and Tripp Isenhour from Landis, sponsored by Senator Hartsell.

S.B. 1569 - Economic Opportunity Act of 1998.

Senator Hoyle was recognized to explain his bill and made a motion that a Committee Substitute be adopted for discussion. This motion was approved. Senator Hoyle then gave an overview of the bill

After Senator Hoyle's explanation and before discussion began on the bill, Senator Kerr recognized Mrs. Annie Louise Woodard,, Widow of former Representative Barney Paul Woodard, who was visiting with her Sunday School Class from Princeton.

Senator Kerr offered an Amendment to S.B. 1569 and Senator Hoyle moved for adoption of the Amendment. After much discussion on this Amendment concerning definition of the word "near", Senator Kerr withdrew his Amendment and offered a substitute Amendment and on his motion, this Amendment was adopted by the Committee. (Amendment # 1)

Senator Hoyle offered an Amendment which was explained by Ms. Martha Harris, Staff Attorney. On motion by Senator Rand and Senator Gulley, this Amendment was adopted by the Committee. (Amendment # 2)

Senator Winner sent forth an Amendment and after much discussion by the committee members, this Amendment was adopted on motion by Senator Hoyle. (Amendment # 3)

Senator Larry Shaw sent forth an Amendment but after much discussion, this Amendment was withdrawn and will be discussed later. (Amendment # 4)

Senator Soles assumed the duty of presiding over the meeting and recognized former Senator Sandy Sands, representing Federal Express, and a copy of his letter with information is included in the minutes. Senator Hoyle read from a letter from Edward A. Johnson, Director of Piedmont Airport Authority.

Senator Larry Shaw sent forth another Amendment and Senator McDaniel made a motion that Amendment # 5 be withdrawn and Amendment # 4 be discussed since there was fiscal information available on Amendment # 4. On motion, and approved by the by the Committee, Amendment # 4 was adopted for discussion.

On motion by Senator Albertson, S.B. 1565, as amended, was given a Favorable Report by the Committee and will be rolled into a new Committee Sub. Copy of Bill, all Amendments, all information on the bill and the new Committee Sub, included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Copy of Committee Report including SB 1569 is Attachment #2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1569*

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors: Senators Hoyle, Ballance, McDaniel, Martin of Guilford, Cochrane, Horton; Blust, Cooper, Dalton, Lucas, Phillips, Purcell, and Warren.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, AND ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of~~

~~Management and Budget.~~ A company is engaged in the air courier services business if it is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the U.S. Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"§ 105-129.3A. Development zone designation.

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one

hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter~~

~~150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large

investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if

the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- ~~The~~ For eligible machinery and equipment placed in service in a development zone during the taxable year, the applicable threshold is zero. For other eligible machinery and equipment, the applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000

Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a

credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(c) Definitions. -- As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not

reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Economic development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants for economic development that will ensure ~~that no~~ that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in

G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The

funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A company is engaged in the air courier services business if it is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the U.S. Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a business engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund.

The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6a) Interstate air carrier. -- A person engaged in the business of transporting persons or property by air in interstate commerce for compensation."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to interstate air carriers of materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales to an interstate air carrier of lubricants, repair parts, and accessories for motor vehicles and aircraft."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft owned or leased by an air courier, assigned to the air courier's hub in this State, and used in the air courier's operations in this State. For the purpose of this subdivision, the air courier's hub is the airport in this State (i) to which the air courier has assigned more than fifty percent (50%) of its aircraft assigned in this State and (ii) at which the air courier receives packages from consolidation locations for intrastate and interstate sorting and distribution. For the purpose of this subdivision, an air courier is a company engaged in the air courier services business, as defined in G.S. 105-129.2."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. EFFECTIVE DATES

Section 12. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 13. Part II of this act becomes effective July 1, 1998.

Section 14. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 15. The remainder of this act is effective when it becomes law.

ECONOMIC OPPORTUNITY ACT OF 1998

HB 1688/SB 1569

The Act

- Modifications to the William S. Lee Quality Jobs and Business Expansion Act
- Creation of State Development Zones
- Modifications to the Industrial Development Fund statutes
- Incentives for air courier hubs
- Incentives for Tier 1 recycling facilities

William S. Lee Quality Jobs and Business Expansion Act Modifications

William S. Lee Act Modifications

- Central Administrative Office Tax Credit
  - Revise tax credit to allow companies operating in temporary space while permanent office space is being constructed to be eligible for the credit
  - Extend the application of tax credits to gross premiums tax to remove exclusion of insurance companies

William S. Lee Act Modifications

- Investment Tax Credit
  - Expand eligibility window for credits calculation from 1 to 2 tax years
  - Permit projects with investment in excess of $100 million to include operating leases in application for investment tax credit

William S. Lee Act Modifications

- Worker Training Tax Credit
  - Modify the WTTC to reimburse businesses for wages paid while employees are in training (capped at $500 per job, $1,000 per job in Tier 1)
  - Would not apply for wages related to production

William S. Lee Act Modifications

- Extension of Carryforward
  - Extend credit usage carryforward from 5 to 20 years for projects greater than $100 million
- Institution of Application Fees
  - Establish a $75 application fee for the William S. Lee Act tax credits

William S. Lee Act Modifications

- Permit tax credit eligibility to a company that acquires a North Carolina business in 'imminent threat' of closure or employee buyout
- Track Federal law by establishing alternate incremental credit for research and development

Establishing
State Development Zones

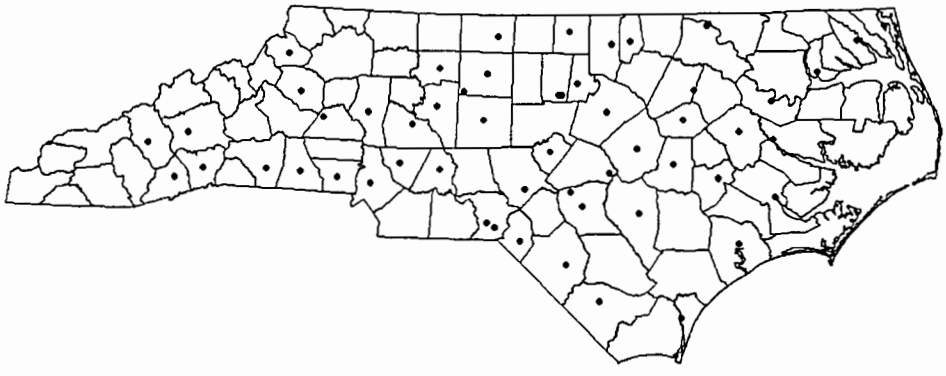
Establishing
State Development Zones

- **Purpose:** To bring economic development to 'pockets of poverty' in municipalities throughout the state that have not shared in the economic gains of the state as a whole

Qualifications

- **Income Standard:** over 20% poverty
- **Boundaries:** contiguous census tracts or block groups that meet the income standard; 1,000 population in zone
- **Municipal Status:** zone must be located within a municipality of at least 5,000 population

Potential State Development Zones



Municipalities with Potential State Development Zones

Albermarle	Asheboro	Asheville (2)	Boone
Brevard	Carrboro	Chapel Hill	Charlotte (2)
Clinton	Concord	Dunn	Durham (3)
Edenton	Elizabeth City	Fayetteville	Forest City
Gastonia	Goldsboro	Greenville	Hamlet
Henderson	Hendersonville	Hickory	High Point (2)
Jacksonville (2)	Kinston	Laurinburg	Lenoir
Lexington	Lumberton	New Bern	Oxford
Raleigh (2)	Reidsville	Roanoke Rapids	Rockingham
Rocky Mount	Roxboro	Salisbury	Sanford
Shelby	Smithfield	Southern Pines	Spring Lake
Statesville	Washington	Waynesville	Whiteville
Williamston	Wilmington (3)	Wilson	Winston-Salem

Tax Credit Incentives

- $4,000 credit for creating jobs in zone, in addition to basic William S. Lee Act job credits
- 7% credit for investing in machinery and equipment (with no threshold requirement)
- $1,000 worker training credit

Zone Funding

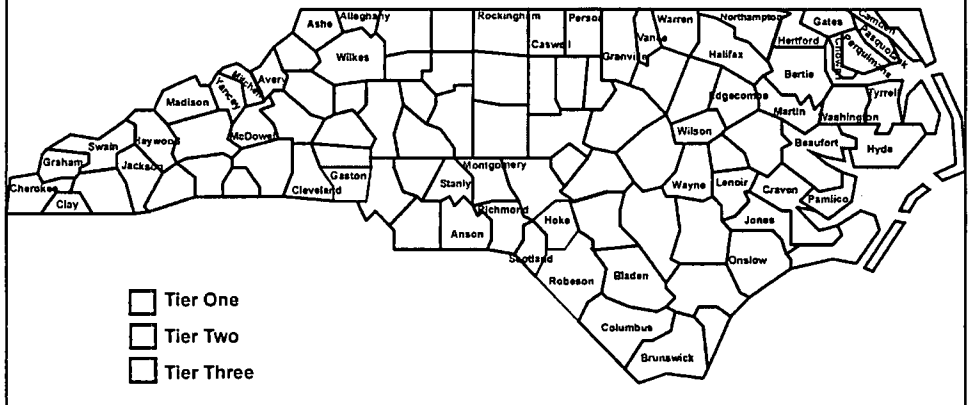
- $2,000,000 proposed in 1998-99 budget
- Competitive grants up to $200,000 to local governments for job-creating projects
- Additional Community Development Block Grant funds will be made available to support the program in eligible communities

Modifications to Industrial Development Fund Statutes

Modifications to Industrial Development Fund Statutes

- Expand IDF statute to extend the Utility Fund, which is currently restricted to Tier 1 counties only, to also include Tier 2 counties
- Increase current IDF maximum per project from $400,000 to $500,000
- Increase the amount per job funding level from $4,000 to $5,000

1998
NORTH CAROLINA
Enterprise Areas



Modifications to Industrial Development Fund Statutes

- Expand the businesses eligible for funding from solely manufacturing to all industries eligible for the Lee Act
- Allow a local government receiving funds to use up to 2% of funds to administer the grant or loan

Air Courier Hubs

Infrastructure Investment

- Creates 21st century infrastructure
- Connects North Carolina to growing air courier industry
- Attracts other companies interested in 'just in time' delivery

Federal Express: The Project

- FedEx: Federal Express is the largest express transportation company in the world
- Employment: Estimated at 750 initially in 2003 (225 full-time, 525 part-time);
  1,500 by 2007 (500 full-time, 1,000 part-time)
- Investment: Approximately $300 million

FedEx: The Benefits

- Economic impact of $2.4 billion over 10 years (Jud Study, UNC-Greensboro)
- Good-paying jobs
  - $34,000/yr. average full-time wage
  - $8-$10/hour part-time wage
- No-layoff policy
  - In the past 2 years, added over 6,000 domestic jobs
  - Rank in the top five in the nation for job creation

FedEx: The Benefits

- Promote from within
  - In past 4 years, have moved more than 21,000 employees from part-time to full-time
- Full benefits package (health, dental, vision, pension plan, stock options) for all employees, including part-time
- Tuition reimbursement program for all employees, including part-time

FedEx: The Impact

- FedEx - Alliance/Ft. Worth (since 1994)
  - —7,500 additional jobs created within sixty mile radius
  - —$700 million in new investment by companies that located or expanded near hub
  - —Intel, Motorola, Eli Lily, Comp USA
- FedEx - Indianapolis (since 1988)
  - —More than sixty manufacturing and distribution companies have expanded or located there as a result of the hub
  - —Siecor, Bayer Pharmaceutical, John Deere
- FedEx - Memphis (since 1980)
  - —3,177 jobs created by customers of FedEx
  - —$247 million in new investment

Air Courier Hubs: Proposed Legislation

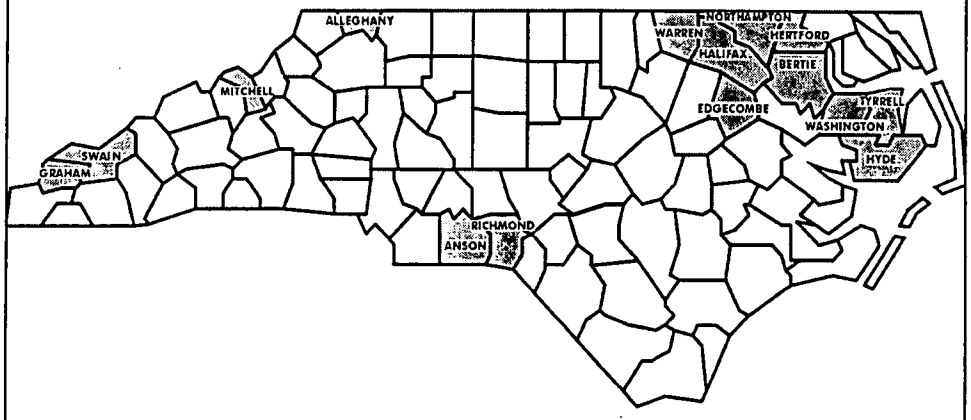
- Add material handling equipment and racking systems to list of eligible equipment to qualify for 1%/$80 sales and use tax cap per single item
- Eliminate sales tax on annual purchases of aircraft parts, lubricants and accessories

Air Courier Hubs: Proposed Legislation

- Exempt property tax on aircraft owned by an air courier and used at courier's hub in this State
- Exempt Piedmont Triad International Airport Authority from 'low bid' requirement
  - Sunset of January 1, 2004
  - Only applies to design & construction of air freight distribution facility

Tier 1 Recycling Facilities

North Carolina's Tier 1 Enterprise Areas



Nucor Corporation: The Project

- Investment: $300 million
- Employment: 300 with $60,000/yr. average wage
- Location: Hertford County (Tier 1 County)
- Product: Plate Steel
- Capacity: 1 million tons/year

Nucor Corporation: The Project

- The Company: Nucor is the second largest steel producer in the U.S. and is head-quartered in Charlotte. Nucor employs over 6,000 people and has 29 facilities in the U.S. and the West Indies.

Nucor Corporation: The Benefits

- High wage ($60,000/yr. average salary) jobs in distressed, rural counties
- Full health benefits package for employees and dependents
- Educational assistance for college-bound children of employees

Nucor Corporation: The Benefits

- No-layoff policy
- Estimated $2 billion impact on local region over 25 years

Nucor Corporation: The Impact

- Documented 'spin off' effect at other Nucor facilities:
  - **Berkeley, SC**: Since 1995, 13 suppliers/customers located or committed to locate by the facility which will generate $158 million in investment and created 650 jobs.
  - **Hickman, AR**: Since 1992, 14 suppliers/customers located by the facility creating $100 million in investment and 1,150 jobs.
  - **Average wage at these facilities:** $44,100 per year

Tier 1 Recycling Facilities: Proposed Legislation

- Investment Tax Credit
  - Increase credit to 50% for recycling facilities in Tier 1 counties who invest over $300 million
  - Allow 25 year carryforward
  - Increase credit to 20% for recycling facilities in Tier 1 counties who invest over $150 million

Tier 1 Recycling Facilities: Proposed Legislation

- Eliminate state sales tax on non-process electricity
- Refund sales tax on construction materials
- Reduce to 1%/$80 per item sales tax on annual purchases on material handling and production equipment and machinery

Tier 1 Recycling Facilities: Proposed Legislation

- Reinvestment Tax Credit
  - To equalize transportation cost differential
  - 10 year sunset with yearly cap
  - Money must be used for:
    - 1) Transportation improvements (rail, dredging, etc.) or
    - 2) Industrial sites and infrastructure in the county

    After 1 & 2 are exhausted, money may then be used to reinvest in property, plant and equipment at the site (over and above initial $300 million)

Fiscal Note

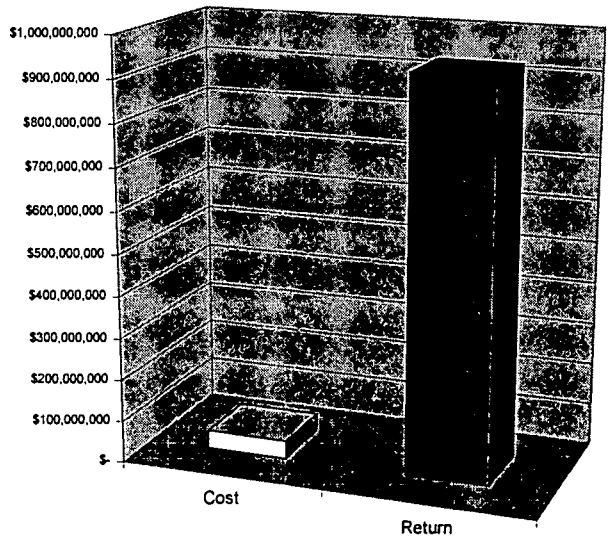
5-year Projections

	98-99	99-00	00-01	01-02	02-03
WSLee **	$0	$0	$1,800,000	$2,475,000	$2,962,500
App. Fee ***	($60,000)	($60,000)	($72,600)	($79,860)	($87,846)
Zones	$0	$0	$423,455	$1,270,364	$2,540,726
Air Courier	$0	$0	$0	$300,000	$600,000
T1 Recycl.	$1,537,500	$2,250,000	$3,147,500	$6,965,000	$9,910,000
TOTAL	**$1,477,500**	**$2,190,000**	**$5,298,355**	**$10,930,504**	**$15,925,380**

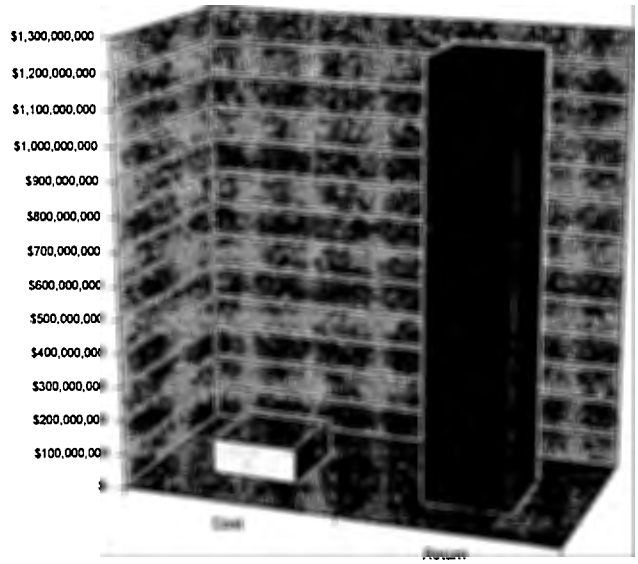
** Includes estimate for the investment tax credit modification, but does not include estimate for R&D tax credit

*** $75 per application at an average of approximately 800 applications per year. Outyear projections assume 10% annual increase in applications.

Return on Investment for FedEx Incentive Package:
Net Present Value of Total Impacts, 1998-2022



Return on Investment for Nucor Incentive Package:
Net Present Value of Total Impacts, 1998-2022



EXPLANATION OF SENATE BILL 1569[1]:
Proposed Committee Substitute (June 16)
Economic Opportunity Act of 1998

TO: House and Senate Finance Committees
FROM: Martha H. Harris, Staff Attorney
DATE: June 15, 1998
SPONSOR: Senator Hoyle

This bill is designed to promote economic development throughout the State in five ways[2]:

1. It makes various amendments to the William S. Lee Act to encourage large investments and remove technical problems with the Act. (1 - 13)
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities. (3-4, 8)
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State. (13 - 15)
4. To encourage development of air courier hubs, it provides sales tax and property tax reductions for air couriers and provides a temporary bidding law exemption for specific projects of the Piedmont Triad International Airport Authority. (15-16)
5. To encourage development of the recycling industry in Tier One counties, it provides an investment tax credit for large and major recycling facilities that locate in Tier One counties and, in addition, it provides a refundable reinvestment credit and sales tax reductions for major recycling facilities. (16 - 23)

William S. Lee Act Modifications. Part I of the bill makes a number of changes to the William S. Lee Quality Jobs and Business Expansion Act, some technical and some substantive. Unless a different date is given, these changes all become effective beginning with the 1999 tax year.

---

[1] The House companion to this bill is House Bill 1688, introduced by Representative Gray.

[2] The proposed committee substitute differs from the original bill in four ways. First, it authorizes local governments to use up to 2% of a grant from the Industrial Development Fund to administer the grant and to verify that the funds are used for the required purposes. Second, it specifies that under the Bill Lee Act, the wage standard for a development zone is the same as in a Tier One County. Third, it narrows the sales tax reductions for air carriers to apply only to air courier hubs. Fourth, it adds Part IV of the bill to encourage development of the recycling industry in Tier One counties.

Part I makes two changes to the central administrative office credit that was enacted last year. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirement for creating new jobs if the jobs begin before the office property is in service but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

Part I also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service from May through September would receive more benefit than a project put in service from November through March. This change goes into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more. Otherwise, the current law allows the credit only for machinery and equipment the taxpayer acquires under a capital lease or purchases and capitalizes.

Part I expands the credit for research and development. The existing credit for research and development piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The bill modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

Part I simplifies the credit for worker training. In order to qualify under current law for the credit for worker training, the taxpayer must get its planned training certified in advance by the Department of Community Colleges. This requirement has been difficult both for taxpayers and for the Department of Community Colleges. The bill replaces the current credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment.

Finally, Part I makes a number of administrative and technical changes to the William S. Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. Most states with similar incentives laws require a fee, and their fees tend to be much higher. The application fee would become effective January 1, 1999. Second, the bill extends

the credit carryforward period for investments over $150 million. Currently, the credit may not reduce the taxpayer's tax liability by more than half, and any excess may be carried forward for up to five years. The bill provides that for large investments, the excess may be carried forward for up to 20 years. Third, the bill clarifies that credits are allowed only for new and expanding businesses, not for existing businesses that are sold to another taxpayer. The bill provides an exception, however, for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business will be able to qualify for the credits to the same extent as a new business. Fourth, the bill clarifies the definitions of the different types of businesses that are eligible for credits[3] and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. Part I of the bill provides for the designation of economically distressed areas located within municipalities as State development zones, and authorizes enhanced incentives for businesses that locate in a development zone. This change becomes effective beginning with the 1999 tax year. The bill defines a development zone as an area (1) consisting of one or more contiguous census tracts and block groups, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four

---

[3] The bill changes statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system. These references are used in the William S. Lee act to define various types of businesses. The bill also changes the term "manufacturing and processing" to "manufacturing" and the term "warehousing and distribution" to "warehousing and wholesale trade" to conform to the NAICS. In April 1997, the United States Office of Management and Budget announced the adoption of a new industry classification replacing the SIC, a system used to classify most of the data we have about industries or kinds of business in our economy. The updating of industry classifications is nothing new. Since its origination in the 1930s, the SIC system has been revised or updated every 10 or 15 years to reflect new developments in the American economy and to address problems identified by data users and statistical agencies. It was last revised in 1987.

years. The bill provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with guidelines established by the Department of Commerce.

Infrastructure Funds. Part II of the bill states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $32 million, $18 million for the Fund and $14 million for the Utility Account. Under current law, money in the Utility Account can be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The bill would expand the scope of the Utility Account to include Tier Two counties. p.13 p 15

Under current law, the Industrial Development Fund provides funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds may be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three Counties are required to match the State funds on a $1/$3 basis. The funding is capped at $4,000 per job to be created and $400,000 per project. The bill would raise the per-job cap to $5,000 and the per-project cap to $500,000. The bill would also expand the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade. p. 14 pp 13-15

Under current law, funds in the Industrial Development Fund and the Utility Account are used for grants to local governments and, in some cases, loans to businesses through the local government and a bank that matches the loan. The bill would clarify that a local government that receives funds, may, if necessary, use up to 2% of the funds to verify that the funds are used as required by law and otherwise to administer the grant or loan. p. 14

Air Courier Hubs. Part III of the bill provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the bill provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the bill provides a sales tax exemption for p. 16

p.16 sales to interstate an air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, the bill provides a property tax p.16 exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where the air courier allocates for property tax purposes more than 50% of its North Carolina aircraft value and where it receives packages from consolidation locations for sorting and distribution.

p.16 Part III also grants a bidding law exemption for the Piedmont Triad International Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the bill provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial p.17 construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land p.17 surrounding the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within p.18 the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV provides an investment tax credit for both large and major pp18-19 recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the William S. Lee Act. The recycling facility investment tax credit differs from the Bill Lee Act credit in the following ways:

1. The Bill Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of p.18 the cost and the major recycling facility credit is equal to 50% of the cost.
2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease the machinery and equipment, p.18 rather than at the time the machinery and equipment are placed in service, as under the Bill Lee Act. If the recycling facility fails to put

the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.

3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to cranes, foundations, transportation equipment, and materials handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, Part IV provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV modifies the existing property tax exemption for property used for recycling, effective beginning with the 1999-20 property tax year. Under current law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. The bill would provide instead that the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Proposed Committee Substitute S1569-PCSX9750-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"**§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"**§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.**

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred

fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"**§ 105-129.27. Credit for investing in large or major recycling facility.**

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000

2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this

Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (e)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the

chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Proposed Committee Substitute S1569-PCS6844-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than fifty percent (50%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"§ 105-129.25. Definitions.

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land surrounding the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of

Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000

2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this

subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8)b. reads as rewritten:

"b. Real or personal property that is used or, if under construction, is to be used ~~exclusively~~ predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as ~~its primary~~ a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of

this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALC-6/17T

Date_____, 199__

Comm. Sub. [YES]
Amends Title []
PCS6844

Sen. _____

moves to amend the bill on page 17, ~~line~~ 15,
by deleting the word "surrounding" and substituting the word "near".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALCX-6/17 Page 1 of __

Date _____, 199__

Comm. Sub. [YES]
Amends Title []
PCS6844

Sen. Hoyle

moves to amend the bill on page 22, lines 5 - 17, by rewriting the lines to read:

"Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

'd. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1569-ARBX-1

Date _____ ,1998

Comm. Sub. [YES]
Amends Title [ ]
S1569-PCS6844-LC

Senator Winner

moves to amend the bill on page 15, line 42, by deleting "fifty percent (50%)" and substituting "sixty percent (60%)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

S1569-ALC-6/16

Date _____, 199

Comm. Sub. [YES]
Amends Title []
PCS6844

Sen. _____

moves to amend the bill on page 12, lines 32 - 33, by deleting the quotation mark at the end of line 32 and adding the following between the lines:

"'§ 105-129.13. Credit for donation for development zone project.

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to thirty percent (30%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project. The credit may not be taken for the year in which the contribution is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal-maker and packager of projects and activities that will increase its constituency' opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALC-6/16 Page 2 of __

(2) Development zone agency. -- Any of the following agencies that undertakes an improvement project in a development zone:
a. A community development corporation.
b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701 et seq.)
c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(3) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment.

(d) The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed ten million dollars ($10,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c) of this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds ten million dollars ($10,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of ten million dollars ($10,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the contribution was made. The Secretary's allocations based on applications filed pursuant to subsection (c) of this section are final and shall not be adjusted to account for credits applied for but not claimed.'";

and on page 9, lines 13 - 14,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALC-6/16 Page 3 of __

by adding the following between the lines:
"(g) Welfare-to-Work Credit. -- The credit allowed a taxpayer under subsection (a) of this section is increased by two thousand five hundred dollars ($2,500) for each job for which all of the following conditions are met:

(1) The taxpayer is allowed a credit under subsection (a) of this section for the job.
(2) The job is located in a development zone.
(3) The taxpayer is eligible for a current year business credit under section 38 of the Code for the welfare-to-work credit under section 51A of the Code for the taxable year for the job.
(4) The job is filled by a long-term family assistance recipient as defined in section 51A of the Code."

and on page 13, lines 12 - 13,
by adding the following between the lines:
"Section 3.1. G.S. 105-164.14 is amended by adding a new subsection to read:
'(h) Development Zone Projects. -- A taxpayer is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of residential or commercial real property located in an area designated as a development zone pursuant to G.S. 105-129.3A. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of each calendar year. Refunds applied for after the due date are barred.'"

and on page 4, line 14,
by adding a new sentence after the period on that line to read:
"A taxpayer is eligible for the credit allowed by G.S. 105-129.13 without regard to the taxpayer's type of business.";

and on page 7, lines 11, 17, and 21,
by adding after the phrase "G.S. 105-129.4" each time it appears the phrase "or G.S. 105-129.13, as applicable,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

72467 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 _____

S. B. No. 1569 Amendment No. 5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Shaw of Cumberland
Sen.)

moves to amend the bill on page 1, line 4

( ) WHICH CHANGES THE TITLE

by deleting "CREATING STATE DEVELOPMENT ZONES,";

and on pg 3, line 33, through page 4, line 10, by deleting the lines;

and on page 8, lines 10 - 12, by deleting the underlined language and changing "~~Located:~~" to "located:";

and on page 8, lines 35 - 36, and line 44, and page 9, lines 1, and 5-7, by removing the underlined language

and on page 10, lines 13-14, and 21-26, by deleting the underlined language;

and on page 12, line 40, through page 13 - line 12, by deleting the lines.

SIGNED Tom Shaw

ADOPTED _____ FAILED _____ TABLED _____

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

150 Fayetteville Street Mall, Suite 2100
Raleigh, NC 27601

Mailing Address
Post Office Box 831
Raleigh, NC 27602
Telephone: (919) 755-2100
Fax: (919) 755-2150

Alexander P. Sands, III
Direct Dial: (919) 755-2111
Direct Fax: (919) 755-6053
E-mail: ssands@wcsr.com

MEMORANDUM

TO: Senator John Kerr
Senator David Hoyle

FROM: Sandy Sands

DATE: June 18, 1998

RE: SB1565

There was some question raised concerning the financing of the Fed Ex facility at the Piedmont Triad Airport yesterday.

For clarification, I have attached a letter from the in-house tax counsel for Fed Ex, along with a letter from Edward A. Johnson, Executive Director of the Piedmont Triad Airport Authority.

I hope this clarifies the issue.

R#258591.1

Joseph L. Schiffhouer
Staff Vice President
Tax & Employee Benefits Law

FDX Corporation
Delivery Code: 1842
1980 Nonconnah Boulevard
Memphis, TN 38132

U S Mail: PO Box 727
Memphis, TN 38194-1842

T: 901/395.3718
F: 901/395.5113
B: 888/754 0124
E: jlschiff@fdxcorp.com

FDX

June 17, 1998

Ashley Thrift
Sandy Sands
Womble Carlyle Sandridge & Rice
150 Fayetteville Street Mall
Suite 2100
Raleigh, NC 27601

RE: Financing for Federal Express Corporation's North Carolina Hub

Dear Ashley and Sandy:

The Piedmont Triad Airport Authority (the "Authority") will issue approximately $300 million of tax-exempt "special purpose facility" revenue bonds to provide the costs of constructing and equipping the cargo handling facility. Federal Express Corporation ("FedEx") will enter into an agreement with the Authority to lease the facility for operation. The bonds will provide that they are limited obligations of the Authority, payable solely from the lease payments received by the Authority from the leasing of the facility. Under the terms of the lease, FedEx will be obligated to make lease payments sufficient to cover all debt service on the special purpose facility bonds. The bonds will not be payable from general airport revenues. In the marketplace, the bonds will be offered and sold on the basis of the FedEx obligations under the lease agreement, and not based upon the general credit of the Authority. Although the special purpose facility bonds technically are not industrial revenue bonds, conceptually they will work the same as industrial revenue bonds.

Very truly yours,

ATTORNEY FOR
FEDERAL EXPRESS CORPORATION

Joseph L. Schiffhouer

Joseph L. Schiffhouer
Staff Vice President - Tax and
Employee Benefits Law
FDX Corporation
PHONE: (901) 395-3718
Address: 1980 Nonconnah Blvd.
Memphis, TN 38132

JLS/mfs /63457_1.DOC

NCDC/PUBLIC AFFAIRS Fax:919-733-8356 Jun 16 1998 14:18 P.01
17 '98 10:03 ID:P.T. AIRPORT AUTHORITY FAX:336-665-1425 PAGE

PIEDMONT TRIAD AIRPORT AUTHORITY®

June 17, 1998

Mr. Martin Johnson
North Carolina Department of Commerce
301 N. Wilmington Street
4th Floor, Education Building
Raleigh, NC 27626

Dear Martin:

Based on our discussions with FedEx, it is contemplated that the Authority will issue Special Purpose Facility Revenue Bonds to help finance the construction and equipping of the FedEx Hub facility at the Airport. The Special Purpose Facility Revenue Bonds will be backed by the credit of FedEx, which will pay project rent under its lease with the Authority in the amount necessary to pay the debt service on the bonds as it becomes due. The bonds will not constitute a general obligation of the Authority and will be payable solely from the project rents. The term of the lease would coincide with the period the bonds are outstanding and would be approximately 25 years, based on present projections.

The Authority would hold legal title to the land to be leased to FedEx and to the facilities to be financed with the Special Purpose Facility Revenue Bonds.

Sincerely,

PIEMDONT TRIAD AIRPORT AUTHORITY

Edward A. Johnson
Executive Director

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Sandy Sands	From Kathy Sawyer
Co.	Co.
Dept.	Phone # 733-3431
Fax # 755-6073	Fax #

Piedmont Triad International Airport
Post Office Box 35445 • Greensboro, North Carolina 27425
Greensboro, (910) 665-5600 • High Point (910) 454-3213 • Winston-Salem (910) 721-0888
FAX: (910) 665-1425

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Extend **Lee Act** targeted investment tax credit to certain operating leases	TY 99	-	-	-1.80	-2.48	-2.96	-2.96	-2.96
Levies $75 application fee for **Lee Act** Credits	TY 99	0.06	0.07	0.07	0.08	0.09	0.09	0.10
Provides **Lee Act** additional tax incentives for establishments located in state development zones	TY 99	-	-	-0.42	-1.27	-2.54	-4.01	-4.01
Lowers sales tax on equipment sold to interstate **air couriers** for handling and storing materials from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.36	-0.36	-0.08	-0.08
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-0.16	-0.16
Provides refundable corporate income tax credit for **major recycling facilities** equal to additional transport expenses	TY 98	-0.15	-0.64	-3.86	-8.05	-9.55	-10.10	-10.40
Lower 4% state sales tax to 1%, $80 limit for cranes, foundations, transportation equipment, and materials handling equipment at **major recycling facility**. Exempts from state sales tax lubricants and other additives for vehicles and machinery used at plant, and other materials and supplies used or consumed in manufacturing process.	9/1/98	-0.27	-0.11	-0.17	-0.19	-0.19	-0.21	-0.22

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Exempts from 2.83% state sales tax electricity used at **major recycling facility.**	9/1/98	-	-	-0.03	-0.07	-0.09	-0.11	-0.12
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-1.33	-	-	-	-	-	-
Expands targeted investment tax credit for investment in machinery and equipment at **major recycling facility**	TY 98	-0.53	-0.53	-0.60	-0.60	-0.73	-1.05	-2.43
TOTAL - STATE GENERAL FUND		**-2.22**	**-1.21**	**-6.81**	**-12.97**	**-16.33**	**-18.59**	**-20.28**

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569
ECONOMIC OPPORTUNITY ACT OF 1998
LOCAL GOVERNMENT REVENUE ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Lowers state sales tax on sales handling and storing materials sold to interstate **air couriers** from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.24	-0.24	-	-
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-	-
Allows property tax exemption for aircraft owned by **air courier** and apportioned for property tax purposes to **courier's hub** in the state	TY 01	-	-	-	-0.35	-0.37	-0.39	-0.41
Exempts from local sales tax cranes, foundations, transportation equipment, materials and supplies, lubricants and other additives for vehicles and other machinery used at major recycling facility and other materials and supplies used or consumed in manufacturing process at **major recycling facility**	9/1/98	-0.13	-0.05	-0.09	-0.09	-0.09	-0.11	-0.11
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-0.67	-	-	-	-	-	-

TY = Tax Year

NOTE: These estimates are preliminary, based on adjustment of cost estimates supplied by Department of Commerce. Some of the losses are associated with economic activity that has not taken place and has not been built into economic assumptions that are part of State General Fund revenue forecast.

FRD, 6/17/98

MEMORANDUM

TO: Rick Carlisle, Secretary of Commerce

FROM: Tom Lee, Poyner & Spruill, L.L.P.

DATE: June 17, 1998

SUBJECT: Piedmont Triad Airport Authority--Federal Express Project

Martin Johnson of your office has asked me to give you a brief description of the nature of the proposed bond issue to finance the Federal Express cargo handling facility to be located at the Piedmont Triad International Airport.

The Piedmont Triad Airport Authority will issue approximately $300 million of tax-exempt "special purpose facility" revenue bonds to provide the costs of constructing and equipping the cargo handling facility. Federal Express will enter into an agreement with the Authority to lease the facility for operation. The bonds will provide that they are limited obligations of the Authority, payable solely from the lease payments received by the Authority from the leasing of the facility. Under the terms of the lease, Federal Express will be obligated to make lease payments sufficient to cover all debt service on the special purpose facility bonds. These bonds will not be payable from general airport revenues. In the marketplace, the bonds will be offered and sold on the basis of the Federal Express obligations under the lease agreement, and not based upon the general credit of the Authority. Although the special purpose facility bonds technically are not industrial revenue bonds, conceptually they will work the same as industrial revenue bonds.

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Sandy Sands	From Kathy Sawyer
Co.	Co.
Dept.	Phone # 733-3431
Fax # 755-6073	Fax #

Federal Express and the Workforce

- Federal Express was honored by the state of Tennessee for hiring 200 people off the welfare rolls in the last two years. Gov. Don Sundquist presented the Families First Large Employer of the Year award to Federal Express during a Families First "Best Practice" conference in Gatlinburg on June 9.

- Of the new Families First employees, 20 percent have already received promotions. The retention rate of these employees has been high: 62 percent.

- The annual starting salary for part-time employees at the Mid-Atlantic hub will be $9 an hour. Part-time employees receive the same benefits as full-time workers: full health, dental and vision insurance; 401(k) and pension plans; and up to $2,000 a year in college tuition reimbursement.

- All employees are guaranteed 17.5 hours a week, and the company is one of the few in the nation to offer a "no layoff" policy.

- The annual salary and benefits package for a part-time employee who works the minimum number of hours (at $9 an hour, with two weeks off for vacation) would total $11,812. If he or she averaged 25 hours a week, the annual total would be $16,875.

- *Fortune* and *Mother Jones* magazines have both named Federal Express one of the 20 best companies to work for in America. A book, *The 100 Best Companies to Work for in America*, placed Federal Express on its lists for "10 Best Overall Companies," "10 Best for Job Security," "10 Best for Women," and "10 Best for Minorities." The National Minority Business Council awarded the company its "Outstanding Corporate Support Award" in 1996.

- At each Federal Express hub, employees manage their own volunteer office, through which they coordinate thousands of hours of community service to organizations such as the March of Dimes, the United Way, and the Toys for Tots program at Christmas.

- Employees have the privilege of riding in the "jump seat" on company planes free of charge for both business and personal travel.

- When a cargo airplane is added to the FedEx fleet, employees have an opportunity to name it by submitting their children's names for a drawing.

- Dr. G. Donald Jud Jr., a professor at the Bryan School of Business at the University of North Carolina at Greensboro, estimates that the Mid-Atlantic hub will add more than 2,500 jobs, $51 million in annual salaries, and $4.1 million to the state and local tax bases. By 2013, the new hub will have had a $2.4 billion impact on the Triad.

Federal Express and the Workforce

- Federal Express was honored by the state of Tennessee for hiring 200 people off the welfare rolls in the last two years. Gov. Don Sundquist presented the Families First Large Employer of the Year award to Federal Express during a Families First "Best Practice" conference in Gatlinburg on June 9.

- Of the new Families First employees, 20 percent have already received promotions. The retention rate of these employees has been high: 62 percent.

- The annual starting salary for part-time employees at the Mid-Atlantic hub will be $9 an hour. Part-time employees receive the same benefits as full-time workers: full health, dental and vision insurance; 401(k) and pension plans; and up to $2,000 a year in college tuition reimbursement.

- All employees are guaranteed 17.5 hours a week, and the company is one of the few in the nation to offer a "no layoff" policy.

- The annual salary and benefits package for a part-time employee who works the minimum number of hours (at $9 an hour, with two weeks off for vacation) would total $11,812. If he or she averaged 25 hours a week, the annual total would be $16,875.

- *Fortune* and *Mother Jones* magazines have both named Federal Express one of the 20 best companies to work for in America. A book, *The 100 Best Companies to Work for in America*, placed Federal Express on its lists for "10 Best Overall Companies," "10 Best for Job Security," "10 Best for Women," and "10 Best for Minorities." The National Minority Business Council awarded the company its "Outstanding Corporate Support Award" in 1996.

- At each Federal Express hub, employees manage their own volunteer office, through which they coordinate thousands of hours of community service to organizations such as the March of Dimes, the United Way, and the Toys for Tots program at Christmas.

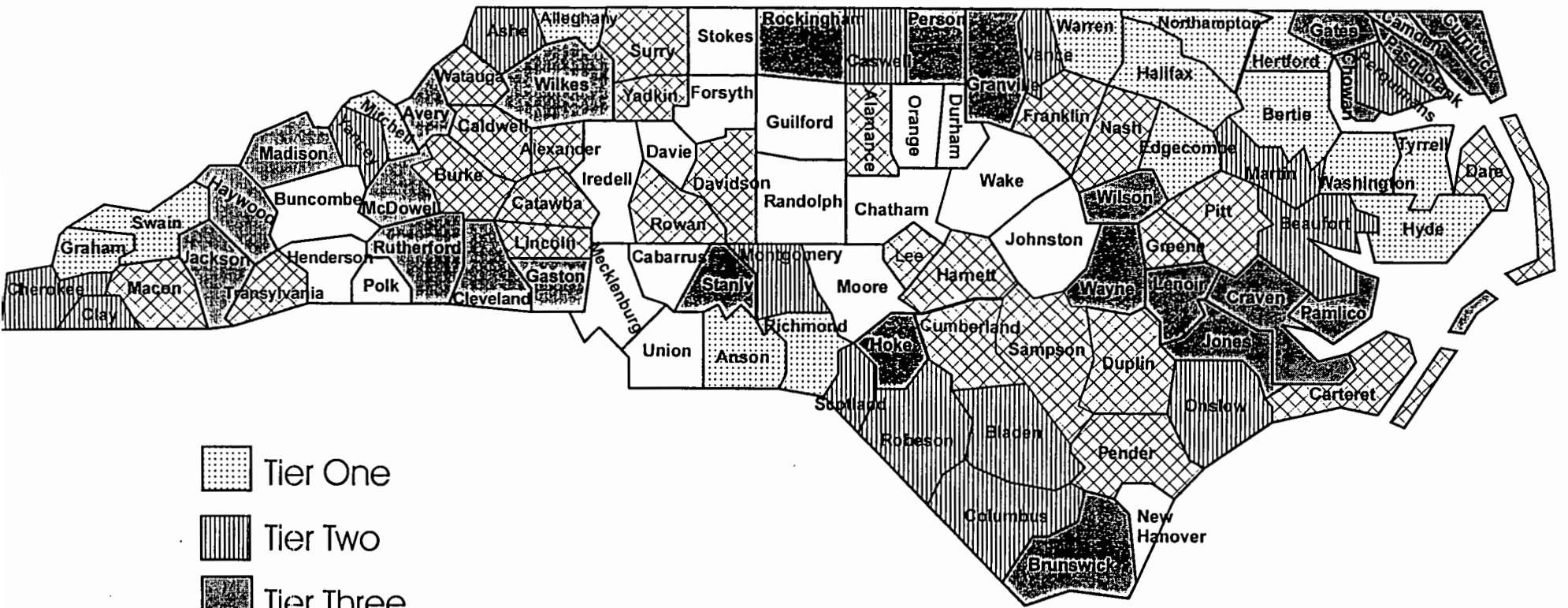
- Employees have the privilege of riding in the "jump seat" on company planes free of charge for both business and personal travel.

- When a cargo airplane is added to the FedEx fleet, employees have an opportunity to name it by submitting their children's names for a drawing.

- Dr. G. Donald Jud Jr., a professor at the Bryan School of Business at the University of North Carolina at Greensboro, estimates that the Mid-Atlantic hub will add more than 2,500 jobs, $51 million in annual salaries, and $4.1 million to the state and local tax bases. By 2013, the new hub will have had a $2.4 billion impact on the Triad.

1998

NORTH CAROLINA ENTERPRISE AREAS



Source: NC Department of Commerce Finance Center
Revised Annually 3/98

VISITOR REGISTRATION SHEET

~~SENATE~~ FINANCE — June 17, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McAlister	Duke Energy
Paul Duncan	WCSR Fed-Ex
Paul Lawler	Lawler Consulting
Richard Beard	Greensboro Chamber of Commerce
Cam Coves	Brooks Pierce McLendon Humphrey Leon or E
Ron Aycock	County Commis. Assoc.
Laura DeVivo	DENR
Mary Carmichael	Mecklenburg County
Ed Regan	N.C. Assoc. of Co. Comm.
Patricia Roeder	NCACC
Butch Gunnells	NCSODA
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE — **June 17, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C. Parker	Bone & Associates
Natalie Hopkins	Charlotte Chamber
Jon M Killian	Moore + Van Allen
Lucius PULLEN	~~ATTORNEY~~
Jim Brown	State Ports
Shelle Waltiere	OSBM
Leslie Bowman	NCCBI
Bernard Allen	SOS
Willie Riddick	DOR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 18, 1998

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

FAVORABLE

H.B. **1246** Modify Davie Room Tax Use
Sequential Referral: None
Recommended Referral: None

S.B. **1333** Landis Annexation
Sequential Referral: none
Recommended Referral: none

S.B. **1426** Increase Autopsy Fee
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **1450** Community Festival Tax Exemption
Sequential Referral: None
Recommended Referral: Appropriations

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

S.B. **1410** Chadbourn Annexation
Draft Number: PCS6843
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1569** Economic Opportunity Act of 1998
Draft Number: PCSX9750
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: None

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JUNE 18, 1998

9:00 A.M. - ROOM 643
11:00 A.M. - ROOM 544

WELCOME

INTRODUCTION OF PAGES

BILL TO BE CONSIDERED:

S.B. 1569 - Economic Opportunity Act of 1998 - Sen. Hoyle
S.B. 1426 - Increase Autopsy Fee - Sen. Rand
S.B. 1410 - Chadbourn Annexation - Sen. Soles
S.B. 1450 - Community Festival Tax Exemption - Sen. Ballantine
S.B. 1333 - Landis Annexation - Sen. Hartsell
H.B. 1246 (SB 1102) - Modify Davie Room Tax Due- Rep. Howard and Sen. Cochrane
H.B. 1367 - Sales Tax Changes - Rep. Hill

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 18, 1998

9:00 A.M. - ROOM 544

The Senate Finance Committee met on Thursday, June 18, 1998 at 9:00 A.M. in Room 544. **This was the first of two meetings on this date**. There were 22 members of the Committee present. Senator John Kerr, Co-chairman of the Committee, called the meeting to order and introduced the Pages, they were: Courtney Harris and Suzy Morgan both from Hertford, North Carolina and sponsored by Senator Marc Basnight.

S. B. 1569 - Economic Opportunity Act of 1998

Senator David Hoyle came to explain the bill. Senator Larry Shaw pulled his amendment #4 to this bill and replaced it with amendment #5 to delete enterprise zone out of bill. Former Senator Sandy Sands spoke on the bill. Senator Hoyle spoke to the Memorandum from Sandy Sands on this Bill. Senator Kerr read the amendment #5. Senator Larry Shaw moved for adoption of amendment #5. There were several questions from members of the Committee on this amendment. Senator Larry Shaw moved to withdraw amendment #5 and rules suspended so that the committee could get a fiscal note on amendment #4 and that amendment #4 be reconsidered. After a time of questions and comments from the members of the committee, Senator Albertson moved that the bill be given a "favorable with the first three (3) amendments rolled into a committee substitute", motion passed. (Copy of Bill, Amendment #5 that was withdrawn, Memorandum from Sandy Sands, Copy of Amendment #4 are included with the minutes)

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:
Visitors Sign In Sheet is Attachment #2
Committee Report dated June 19, 1998 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Proposed Committee Substitute S1569-PCSX9750-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"§ 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred

fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000

2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this

Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the

chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

150 Fayetteville Street Mall, Suite 2100
Raleigh, NC 27601

Mailing Address
Post Office Box 831
Raleigh, NC 27602
Telephone: (919) 755-2100
Fax: (919) 755-2150

Alexander P. Sands, III
Direct Dial: (919) 755-2111
Direct Fax: (919) 755-6053
E-mail: ssands@wcsr.com

MEMORANDUM

TO: Senator John Kerr
Senator David Hoyle

FROM: Sandy Sands APS

DATE: June 18, 1998

RE: SB ~~1565~~ 1569

There was some question raised concerning the financing of the Fed Ex facility at the Piedmont Triad Airport yesterday.

For clarification, I have attached a letter from the in-house tax counsel for Fed Ex, along with a letter from Edward A. Johnson, Executive Director of the Piedmont Triad Airport Authority.

I hope this clarifies the issue.

R#258591.1

Joseph L. Schiffhouer
Staff Vice President
Tax & Employee Benefits Law

FDX Corporation
Delivery Code: 1842
1980 Nonconnah Boulevard
Memphis, TN 38132

U S Mail: PO Box 727
Memphis, TN 38194-1842

T: 901/395.3718
F: 901/395.5113
B: 888/754 0124
E: jlschiff@fdxcorp.com

FDX

June 17, 1998

Ashley Thrift
Sandy Sands
Womble Carlyle Sandridge & Rice
150 Fayetteville Street Mall
Suite 2100
Raleigh, NC 27601

RE: Financing for Federal Express Corporation's North Carolina Hub

Dear Ashley and Sandy:

The Piedmont Triad Airport Authority (the "Authority") will issue approximately $300 million of tax-exempt "special purpose facility" revenue bonds to provide the costs of constructing and equipping the cargo handling facility. Federal Express Corporation ("FedEx") will enter into an agreement with the Authority to lease the facility for operation. The bonds will provide that they are limited obligations of the Authority, payable solely from the lease payments received by the Authority from the leasing of the facility. Under the terms of the lease, FedEx will be obligated to make lease payments sufficient to cover all debt service on the special purpose facility bonds. The bonds will not be payable from general airport revenues. In the marketplace, the bonds will be offered and sold on the basis of the FedEx obligations under the lease agreement, and not based upon the general credit of the Authority. Although the special purpose facility bonds technically are not industrial revenue bonds, conceptually they will work the same as industrial revenue bonds.

Very truly yours,

ATTORNEY FOR
FEDERAL EXPRESS CORPORATION

Joseph L. Schiffhouer

Joseph L. Schiffhouer
Staff Vice President - Tax and
Employee Benefits Law
FDX Corporation
PHONE: (901) 395-3718
Address: 1980 Nonconnah Blvd.
Memphis, TN 38132

JLS/mfs /63457_1.DOC

NCDC/PUBLIC AFFAIRS Fax:919-733-8356 Jun 16 1998 14:18 P.01
17 '98 10:03 ID:P.T. AIRPORT AUTHORITY FAX:336-665-1425 P.01

PIEDMONT TRIAD AIRPORT AUTHORITY®

June 17, 1998

Mr. Martin Johnson
North Carolina Department of Commerce
301 N. Wilmington Street
4th Floor, Education Building
Raleigh, NC 27626

Dear Martin:

Based on our discussions with FedEx, it is contemplated that the Authority will issue Special Purpose Facility Revenue Bonds to help finance the construction and equipping of the FedEx Hub facility at the Airport. The Special Purpose Facility Revenue Bonds will be backed by the credit of FedEx, which will pay project rent under its lease with the Authority in the amount necessary to pay the debt service on the bonds as it becomes due. The bonds will not constitute a general obligation of the Authority and will be payable solely from the project rents. The term of the lease would coincide with the period the bonds are outstanding and would be approximately 25 years, based on present projections.

The Authority would hold legal title to the land to be leased to FedEx and to the facilities to be financed with the Special Purpose Facility Revenue Bonds.

Sincerely,

PIEMDONT TRIAD AIRPORT AUTHORITY

Edward A. Johnson
Executive Director

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Sandy Sands	From Kathy Sawyer
Co.	Co.
Dept.	Phone # 733-3431
Fax # 755-6073	Fax #

Piedmont Triad International Airport
Post Office Box 35445 • Greensboro, North Carolina 27425
Greensboro, (910) 665-5600 • High Point (910) 454-3213 • Winston-Salem (910) 721-0088
FAX: (910) 665-1425

MEMORANDUM

TO: Rick Carlisle, Secretary of Commerce

FROM: Tom Lee, Poyner & Spruill, L.L.P.

DATE: June 17, 1998

SUBJECT: Piedmont Triad Airport Authority--Federal Express Project

Martin Johnson of your office has asked me to give you a brief description of the nature of the proposed bond issue to finance the Federal Express cargo handling facility to be located at the Piedmont Triad International Airport.

The Piedmont Triad Airport Authority will issue approximately $300 million of tax-exempt "special purpose facility" revenue bonds to provide the costs of constructing and equipping the cargo handling facility. Federal Express will enter into an agreement with the Authority to lease the facility for operation. The bonds will provide that they are limited obligations of the Authority, payable solely from the lease payments received by the Authority from the leasing of the facility. Under the terms of the lease, Federal Express will be obligated to make lease payments sufficient to cover all debt service on the special purpose facility bonds. These bonds will not be payable from general airport revenues. In the marketplace, the bonds will be offered and sold on the basis of the Federal Express obligations under the lease agreement, and not based upon the general credit of the Authority. Although the special purpose facility bonds technically are not industrial revenue bonds, conceptually they will work the same as industrial revenue bonds.

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Sandy Sands	From Kathy Sawyer
Co.	Co.
Dept.	Phone # 733-3431
Fax # 755-6073	Fax #

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

S1569-ALC-6/16

Date _____, 199

Comm. Sub. [YES]
Amends Title []
PCS6844

Sen. _____

moves to amend the bill on page 12, lines 32 - 33, by deleting the quotation mark at the end of line 32 and adding the following between the lines:

"'§ 105-129.13. Credit for donation for development zone project.

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to thirty percent (30%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project. The credit may not be taken for the year in which the contribution is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal-maker and packager of projects and activities that will increase its constituency' opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALC-6/16 Page 2 of __

(2) Development zone agency. -- Any of the following agencies that undertakes an improvement project in a development zone:
a. A community development corporation.
b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701 et seq.).
c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(3) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment.

(d) The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed ten million dollars ($10,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c) of this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds ten million dollars ($10,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of ten million dollars ($10,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the contribution was made. The Secretary's allocations based on applications filed pursuant to subsection (c) of this section are final and shall not be adjusted to account for credits applied for but not claimed.'";

and on page 9, lines 13 - 14,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

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

S1569-ALC-6/16

by adding the following between the lines:
"(g) Welfare-to-Work Credit. -- The credit allowed a taxpayer under subsection (a) of this section is increased by two thousand five hundred dollars ($2,500) for each job for which all of the following conditions are met:

(1) The taxpayer is allowed a credit under subsection (a) of this section for the job.
(2) The job is located in a development zone.
(3) The taxpayer is eligible for a current year business credit under section 38 of the Code for the welfare-to-work credit under section 51A of the Code for the taxable year for the job.
(4) The job is filled by a long-term family assistance recipient as defined in section 51A of the Code."

and on page 13, lines 12 - 13,
by adding the following between the lines:
"Section 3.1. G.S. 105-164.14 is amended by adding a new subsection to read:
'(h) Development Zone Projects. -- A taxpayer is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of residential or commercial real property located in an area designated as a development zone pursuant to G.S. 105-129.3A. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of each calendar year. Refunds applied for after the due date are barred.'"

and on page 4, line 14,
by adding a new sentence after the period on that line to read:
"A taxpayer is eligible for the credit allowed by G.S. 105-129.13 without regard to the taxpayer's type of business.";

and on page 7, lines 11, 17, and 21,
by adding after the phrase "G.S. 105-129.4" each time it appears the phrase "or G.S. 105-129.13, as applicable,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Withdrawn

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1569 Amendment No. #5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Shaw of Cumberland
Sen.)

moves to amend the bill on page 1, line 4

( ) WHICH CHANGES THE TITLE

by deleting "CREATING STATE DEVELOPMENT ZONES,";

and on pg 3, line 33, through page 4, line 10, by deleting the lines;

and on page 8, lines 10 - 6 12, by deleting the underlined language and changing "~~located:~~" to "located:";

and on page 8, lines 35 - 36, and line 44, and page 9, lines 1, and 5-7, by removing the underlined language

and on pages 10, lines 13-14, and 21-26, by deleting the underlined language;

and on page 12, line 40, through page 13 - line 12, by deleting the lines.

SIGNED Tom Shaw

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

(Attachment #2)

9AM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/18/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Hawkins	Charlotte Chamber
Michelle Cook	Weyerhaeuser
[illegible] Duncan	WCSR/Ackley
Tiffany Walker	ALLTEL
Carl Lawler	Lawler Consulting
Frank Gray	NCAHSE
Carol J. Boggs	Charlotte
[illegible]	WCSR
Ashley Thrift	WCSR
[illegible]	WCSR
[illegible]	Sen Rand's office

9AM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/18/'98

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Hare	DOR
Debra Swiren	"
Betty Davis	"
DW GERLACH	BTC
Marilyn Johnson	NCDOC
Amy Pinak	NC Senate
John Berndt	Commerce

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Friday, June 19, 1998

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

FAVORABLE

H.B. **1246** Modify Davie Room Tax Use
Sequential Referral: None
Recommended Referral: None

S.B. **1333** Landis Annexation
Sequential Referral: none
Recommended Referral: none

S.B. **1426** Increase Autopsy Fee
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **1450** Community Festival Tax Exemption
Sequential Referral: None
Recommended Referral: Appropriations

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

S.B. **1410** Chadbourn Annexation
Draft Number: PCS6843
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1569** Economic Opportunity Act of 1998
Draft Number: PCSX9750
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: None

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JUNE 18, 1998

11:00 A.M. - ROOM 544

WELCOME

INTRODUCTION OF PAGES

BILL TO BE CONSIDERED:

S.B. 1426 - Increase Autopsy Fee - Sen. Rand
S.B. 1410 - Chadbourn Annexation - Sen. Soles
S.B. 1450 - Community Festival Tax Exemption - Sen. Ballantine
S.B. 1333 - Landis Annexation - Sen. Hartsell
H.B. 1246 (SB 1102) - Modify Davie Room Tax Due- Rep. Howard and Sen. Cochrane
H.B. 1367 - Sales Tax Changes - Rep. Hill

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 18, 1998

11:00 A.M. - ROOM 544

The Senate Finance Committee met for the second time on Thursday, June 18, 1998 at 11:00 A.M. in Room 544 LOB. There were 15 members of the committee present. Senator John Kerr, Co-chairman, called the meeting to order and introduced the Pages, they were: Chad Baucom from Charlotte, North Carolina, sponsored by Senator Rucho and Tripp Isenhour from Landis, North Carolina, sponsored by Senator Hartsell.

S. B. 1410 - Chadbourn Annexation

Senator Soles came to explain the bill. Senator Jim Phillips moved for adoption of proposed committee substitute for discussion, motion passed. There were several questions about the bills from members of the committee. Senator John Blust made a motion to give the proposed committee substitute a "favorable" report, motion passed. (Copy of Bill, Proposed Committee Substitute are included in minutes)

S. B. 1426 - Increase Autopsy Fee

Senator Rand came to explain the bill. Senator William Purcell made a motion to give the bill a "favorable" report and that the bill be sent to Appropriations, motion passed. (Copy of Bill, Explanation and Fiscal Note are included in Minutes)

S. B. 1450 - Community Festival Tax Exemption

Senator Patrick Ballantine came to explain the Bill. Senator Weinstein moved to give the bill a "favorable" report and that the bill be sent to Appropriations, motion passed. (Copy of Bill, Explanation and Fiscal Note are included in Minutes).

S. B. 1333 - Landis Annexation

Senator Hartsell came to explain the bill. Senator Betsy Cochrane moved to give the bill a "favorable" report, motion passed. (Copy of Bill included in Minutes).

H. B. 1246 (S.B. 1102) - Modify Davie Room Tax Due

Senator Betsy Cochrane explained the Bill which is identical to Senate Bill 1102, after which time she moved to give the bill a "favorable" report, motion passed. (Copy of Bill, S. B. 1102, Explanation and Fiscal Note are included in the Minutes)

H. B. 1367 - Sales Tax Changes was not heard at this meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #2
Committee Report is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1410

Short Title: Chadbourn Annexation. (Local)

Sponsors: Senator Soles.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ANNEX AN AREA TO THE TOWN OF CHADBOURN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Chadbourn are extended to include the following described area:

Section 2. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1410
Proposed Committee Substitute S1410-PCS6843

Short Title: Chadbourn Annexation. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN BOARD TO ANNEX AN AREA TO THE TOWN OF CHADBOURN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Chadbourn are extended to include the following described area:

BEGINNING at a point in a Northern line of the city limits of the Town of Chadbourn, N.C., as set out on map of Town of Chadbourn, N.C. as recorded in Map Book 52 Page 50, said Point of Beginning being located North 89 degrees 54 minutes 00 seconds East from a point marked by a concrete monument where said Northern line of the city limits crosses Blake Road, and having N.C. Grid Coordinates N=212,121.54, E-2,049,423.43, an approximate distance by scale of 1,150 feet to a point in the center of a Dunn Swamp drainage canal as shown within Tract 4 of a map of a subdivision of the J. R. Blake Land as recorded in Map Book 8 Page 3, Columbus County Public Registry, thence with the center of said canal Northwestwardly, crossing U. S. Highway 76 an approximate distance by scale of 1,300 feet to a point in said canal, the First and Southern corner of a 35 acre tract of lands of now or formerly John Milton Mills Blake as set out in Deed Book 178 Page 436; thence with the First and Southeastern line of said lines of Blake, old course and distance cited as North 36 degrees East 14 chains and 50 links to Evergreen Public Road thence continuing Northeastwardly across said Road to the Western corner of lands of Haworth, Inc.'s 19.52 acre tract; thence Northeastwardly, cited bearing being North 33 degrees 48 minutes 40 seconds East, a distance of 830.40 feet to a point, the

Western corner of lands of now or formerly A. P. Worley thence continuing Northeastwardly with a line of said lands of A. P. Worley, Jr. to a point in said line where same is intersected by a Westwardly projection of the Northern property line of lands of now or formerly Thomas Carson Powell as set out in Deed Book 376 Page 073; thence a cited bearing South 82 degrees 37 minutes East to, and then with, and beyond said Northern line of lands of Thomas C. Powell as shown on survey of same dated July 24, 1986 by Soles & Walker, P.A., Registered Land Surveyors, to a point marked by an old nail in the center of N.C. Hwy 410; thence Southwardly with the centerline of N.C. Hwy 410 an approximate distance by scale of 120 feet to a point where said centerline is intersected by a ditch along the Northern property line of lands of Harry Edward Reed, Jr., as set out in Deed Book 520 Page 225; thence to and with the Northern line of said lands of Reed, the cited course and distance being North 89 degrees 15 minutes 49 seconds East, an approximate distance by scale of 1,000 feet to a point in said line at the intersection of ditches, thence Southwardly with a ditch leading through said lands of Reed, an approximate distance by scale of 1,050 feet to a point in a Southern line of lands of Reed, also a Northern line of lands of Horace Cox, thence Eastwardly along a ditch with the line between lands of Reed and Cox, an approximate distance by scale of 120 feet to a point, thence Southwardly along a ditch and beyond crossing U.S. Hwy 76 Bypass an approximate distance by scale of 1,300 feet to a point on the Southern Right-of-Way line of U.S. Hwy 76 Bypass, thence westwardly with the Southern Right-of-Way line of U.S. Hwy 76 Bypass, an approximate distance by scale of 530 feet to a point marked by an old iron in a ditch, the Northeastern corner of a 3.76 acre tract as set out on survey map entitled, "Survey for Alva G. Cole, Jr. and Carole Cole Bailey and Samuel D. Cole, Sr." dated by July 28, 1995 by Soles & Walker, P.A., Registered Land Surveyors; thence with the Eastern line of said 3.76 acre tract, cited bearing and distance being South 04 degrees 12 minutes 37 seconds West, 373.40 feet to a point marked by an iron in a ditch, thence with said ditch or canal in a Southeastwardly and then Southwardly direction, through lands of Wanda McClelland Barfield as shown on survey map entitled, "Survey for Wanda McClelland Barfield" dated December 03, 1996 by Soles & Walker, P.A., Registered Land Surveyors, and continuing Southwardly along the center of said canal, an approximate distance by scale from the Southeast line of Barfield, 200 feet to a point in an existing Northern city limit line, bearing North 89 degrees 54 minutes 00 seconds East, an approximate distance by scale of 650 feet Eastwardly from N.C. Hwy 410; thence in a generally Westwardly direction with the existing city limit lines of the Town of Chadbourn, N.C. as set out on aforementioned map of Town of Chadbourn, N.C., as recorded in Map Book 52 Page 50 to the Point of Beginning, containing, by scale, 196.00 acres, more or less.

There is excepted herefrom all of that certain tract containing approximately 5.1 acres, more or less, designated "Annexed Area "A'" on aforesaid map of Chadbourn, N.C. as recorded in Map Book 52 Page 50.

BEGINNING at a point in a Eastern line of the city limits of Chadbourn, N.C. as set out on Map of Town of Chadbourn, N.C., as recorded in Map Book 52 Page 50 said point of beginning being located South 00 degrees 06 minutes 00 seconds East from a point marked by a concrete monument where said Eastern line of the city limits crosses Old U.S. Hwy. 74-76 (Strawberry Boulevard), and having N.C. Grid Coordinates N-209,637.11, E=2,056,138.84, an approximate distance by scale of 600 feet to a point where said city limit line is intersected by the center of the existing Soules Swamp Chadbourn Watershed Canal; thence Eastwardly with the center of said Chadbourn Watershed Canal an approximate distance by scale of 5,000 feet to a point in the centerline of paved S.R. 1005, thence with the centerline of said S.R. 1005 Northwardly, crossing Old U.S. Hwy 74-76, an approximate total distance by scale of 1,350 feet to a point where said S.R. 1005 crosses a ditch; thence to and with said ditch in a West-Northwest direction an approximate distance by scale of 600 feet, crossing lands of Mrs. Cecil Fitz to a point in a Western line of lands of said Fitz lands; thence continuing with said ditch Northwestwardly to its intersection with the Northern line of lands of now or formerly Chadbourn Tobacco Warehouse as recorded in Deed Book 293 Page 544; thence with the Northern line of said tract in a Westwardly direction to the Northwest corner of said tract also in Eastern line of lands of now or formerly J.S. Singletary and Lucian P. Stephens as set out in deed recorded in Deed Book 370 Page 956; thence Southwardly with said Eastern line of lands of said Singletary and Stephens, and then lands of Jesse Densil Worthington as set out in deed recorded in Deed Book 402 Page 378, an approximate total distance by scale of 650 feet to a point in said line normal to and 350 feet Northwardly from the centerline of Old U.S. Hwy 74-76; thence Westwardly 350 feet normal to and Northwardly from the centerline of Old U.S. Hwy 74-76, an approximate distance by scale of 2,000 feet to a point in the eastern line of lands of Chadbourn Cemetery as set out on map entitled, "Map of Chadbourn Cemetery" dated October 25, 1971, by Willis & Walker, Registered Land Surveyors; thence with said line of Chadbourn Cemetery, also a Western line of lands of Frederick Boege, Jr. as set out in deed recorded in Deed Book 389 Page 874, Northwardly, an approximate distance by scale of 500 feet to a point, the Northeastern corner of said lands of Chadbourn Cemetery; thence Westwardly with the Northern line of said lands of Chadbourn Cemetery, along a ditch, an approximate distance by scale of 500 feet to the Northwestern corner of said lands of Chadbourn Cemetery, thence a new line in a Westwardly projection of said Northern line of said lands of Chadbourn Cemetery, an approximate distance by scale of 850 feet to a new point in the center of an existing Chadbourn Watershed Drainage Canal; thence Northwardly with the center of said canal, an approximate distance by scale of 650 feet to a point, a corner of the existing city limits of the Town of Chadbourn, N.C., said point being a the terminus of line L18 on aforementioned map as recorded in Map Book 52 Page 50; thence with an existing city limit line North 83 degrees 05 minutes 06 seconds West 486.87 feet to a point marked by an iron pipe; thence with an existing city limit line South 00 degrees 06 minutes 00 seconds East an approximate distance by scale of 1,900 feet to the Point of Beginning, containing, by scale, 127.00 acres, more or less.

Section 2. Section 1 of this act becomes effective only by adoption of an ordinance by the Town of Chadbourn.

Section 3. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1426

Short Title: Increase Autopsy Fee. (Public)

Sponsors: Senator Rand.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE FOR AUTOPSIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

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

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

Section 2. This act becomes effective July 1, 1998, and applies to autopsies or other studies performed on and after that date.

SENATE BILL 1426 - INCREASE AUTOPSY FEE

- Autopsies are essential to the effective investigation of homicides and other suspicious deaths in North Carolina.

- The fee for these autopsies has been frozen by statute for more than a decade (since 1986) at $400. Senate Bill 1426 (*Rand*) proposes to increase the statutory autopsy fee to $1,000. (Private pathologist must pay staff and hospital out of this fee, the costs of which are approximately $100).

- Experience and studies have shown that the statutory fee is not sufficient to cover the cost of facilities, personnel and professional services needed to properly conduct a medical-legal autopsy.

- A study done by Wake Forest School of Medicine concluded that the total costs of a medical examiner autopsy is $1,615.24.

- Another study appearing in the **1985** Pathology Annual, Vol. 20 Part 1, indicated that the cost of a complete autopsy in 1978 was $1,000 and approximately $1,500 in 1985. In addition, the journal The Autopsy Medical Practice and Public Policy in 1986 cited several studies that indicate that the costs of an autopsy reach at least $1,000.

- The medical examiner system depends on a network of private pathologists who are willing to contract with the State to perform this vital service. These private pathologists are performing approximately 2,000 of the 3,570 medical-legal autopsies ordered each year.

- As a general rule, the county pays for the autopsy when a person dies or receives a death-inducing injury in their home county. Other autopsies are paid by the State. State-paid autopsies comprise approximately 20% of all medical-legal autopsies.

- The evidence obtained through autopsies is becoming vital in any subsequent legal proceeding and is vital for law enforcement and other investigative agencies that may be involved.

- This bill is supported by the Office of the Chief Medical Examiner, Department of Human Resources, District Attorneys, NC Medical Society, State Health Director, Office of Chief Medical Examiner.

EXPLANATION OF SENATE BILL 1426:
Increase Autopsy Fee

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1998
SPONSOR: Senator Rand

An autopsy must be performed when a medical examiner, a district attorney, or a superior court judge decides that one is necessary. The cost of performing the autopsy is borne by the State unless the decedent is a resident of the county in which the death or fatal accident occurred. In that instance, the county pays the cost of the autopsy. Of the 3,570 autopsies performed each year, approximately 2,010 are performed by private contracted pathologists and the remaining 1,560 are performed by the State through the Office of the Chief Medical Examiner in Chapel Hill and the Mecklenburg County Office. **Senate Bill 1426** increases the fee that may be charged for an autopsy by private contracted pathologists and the medical institutions from $400 to $1,000.

An autopsy is the physical examination of a dead person for the purpose of determining what injuries or illnesses might be present within the decedent's body and what role those injuries or illnesses played in the decedent's death. The steps involved in an autopsy include medical histories, interviews with witnesses and law enforcement officers, external and internal examinations of the body, samples of blood, urine, and fluids taken for taxicological purposes, and preparation of reports submitted to the Office of the Chief Medical Examiner.

Professionals in the field of pathology do not believe this fee is adequate to cover the costs of performing autopsies. Under the statute, there is not a separate reimbursement for overhead expenses. In some circumstances, the pathologists must give part of the fee to a hospital or their staff to cover these overhead charges. Many physicians who have served as regional pathologists for the State Medical Examiner's system for many years are no longer agreeing to serve as medical examiners and regional pathologists because the fee they are able to charge does not cover their costs of performing the work.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1426

SHORT TITLE: Increase Autopsy Fee

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Autopsy Fees Paid By Counties to the State	$363,600	$363,600	$363,000	$363,000	$363,000
EXPENDITURES					
Autopsy Fee Costs to Counties	$1,569,600	$1,569,600	$1,569,600	$1,569,600	$1,569,600

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY: This bill increases the fee for autopsies from four hundred dollars ($400.00) to one thousand dollars ($1,000), amending G.S. 130A-389.

ASSUMPTIONS AND METHODOLOGY: According to the Office of the Chief Medical Examiner, there are approximately 3,570 medical examiner autopsies performed each year. This number is expected to remain constant. Of the medical examiner autopsies performed each year, approximately 2,010 are performed by private contracted pathologists, 1,260 are performed at the Office of the Chief Medical Examiner in Chapel Hill, and 300 are performed at the Mecklenburg County Office. Payment for these autopsies is as follows:

402 paid by the state to private contracted pathologists
1,608 paid by the county to private contracted pathologists
1,008 paid by the county to the state
+ 552 no payment, conducted by the state for the state
3,570 TOTAL AUTOPSIES PERFORMED

Cost increase for State (Costs incurred by the State are offset by payments from the counties for autopsies performed by the State)

The difference in costs paid for autopsies by the state given a $600 increase in the autopsy fee computes as follows:

402 x $400 = $160,800
- 402 x $1,000 = $402,000
$241,200 Increase in costs paid by the state to private contracted pathologists

Cost increase for Counties

The difference in costs paid for autopsies by the counties given a $600 increase in the autopsy fee computes as follows:

1,608 x $400 = $643,200
+1,008 x $400 = $403,200
$1,046,400 Costs paid for autopsies by the counties with autopsy fee set at $400

1,608 x $1000 = $1,608,000
+1,008 x $1000 = $1,008,000
$2,616,000 Costs paid for autopsies by the counties with a $600 increase in the autopsy fee

$2,616,000
- $1,046,400
$1,569,600 TOTAL INCREASED COSTS TO THE 100 COUNTIES

Net Revenue to the State

The cost increase for the state of $241,200 is offset by the autopsy fees paid to the state from the counties. The increased revenue to the state generated by a $600 increase in the autopsy fee is $604,800 = $1,008,000- $403,200. Thus, the net revenue increase to the state is $363,600 = $604,800 - 241,200.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Ramona L. Burton
APPROVED BY:
DATE: June 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1450

Short Title: Community Festival Tax Exemption. (Public)

Sponsors: Senator Ballantine.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A GROSS RECEIPTS TAX EXEMPTION FOR CERTAIN NONPROFIT COMMUNITY FESTIVALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-37.1(a) reads as rewritten:

"(a) Every person, firm, or corporation engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where such admission charges are made.

In addition to the license tax levied above, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of three percent (3%). Reports shall be made to the Secretary of Revenue, in such form as he may prescribe, within the first 10 days of each month covering all such gross receipts for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.

Every person, firm, or corporation giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of fifty dollars ($50.00) for each location where such charges are made, and, in addition, a tax upon the gross receipts derived from admission

charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with such regulations as may be made by the Secretary of Revenue. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as herein before required.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

The license and gross receipts taxes imposed by this section do not apply to community festivals held by a nonprofit organization that meets all of the following conditions:

(1) It holds no more than one community festival during a calendar year.

(2) Its community festival lasts no more than seven days.

(3) Its community festival involves a variety of exhibitions, walking tours, entertainments, and activities, the majority of which are held outdoors and are open to the public."

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

EXPLANATION OF SENATE BILL 1450 (PCS):
Community Festival Tax Exemption

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 17, 1998
SPONSOR: Senator Ballentine

This bill creates a new exemption from the privilege license tax for community festivals held by a person who is exempt from State income tax and who meets all of the following conditions:

(1) The person holds no more than one community festival a year.
(2) The festival lasts no more than 7 days.
(3) The festival involves a variety of exhibitions, walking tours, entertainments, and activities, the majority of which are held outdoors and are open to the public.

The bill becomes effective July 1, 1998. The proposed committee substitute states that the community festival must be held by a person who is exempt from State income tax, while the bill's earlier version stated that the festival must be held by a nonprofit organization.

Current Law

The State levies a 3% gross receipts tax on anyone engaged in the business of offering amusements, athletic events, dances, and entertainments for which an admission is charged. These exemptions from the tax are narrowly drawn:

- Elementary and secondary athletic contests
- The first $1,000 of receipts from fund-raising dances actually managed by the civic group or school raising funds
- Fund-raising entertainments produced exclusively by volunteer local talent
- Entertainments (but not athletic events) offered at and by a nonprofit arts center
- Nonprofit teen centers.
- Amusements on the Cherokee Indian Reservation

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1450 (First Edition)

SHORT TITLE: Community Festival Tax Exemption

SPONSOR(S): Senator Ballantine

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This bill is effective July 1, 1998.

BILL SUMMARY: The bill exempts certain nonprofit community festivals from paying the gross receipts tax.

ASSUMPTIONS AND METHODOLOGY: Only one community festival in Southeastern North Carolina appears to meet the following qualifications: 1) is held once a year, 2) last no more than 7 days, and 3) involves a variety of exhibitions, walking tours, entertainers, and activities which are held mostly outdoors. The Department of Revenue identified New Year's Eve festivals and crop/product festivals that potentially could benefit from the exemption, but found they did not meet all the qualifications of this act. The requirement for the festival to include a walking tour seems to exclude most of the festivals from the exemption.

Based on tax records from 1996, 1997, and 1998 provided by the one currently eligible festival, the state collected less than $8,000 each year in gross receipts tax. A gross receipts tax was charged on admissions to two concerts sponsored by the festival. Since this festival plans to continue scheduling two concerts per year in the near future, the estimated revenue loss from SB 1450 is $8,000 per year.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: June 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1333

Short Title: Landis Annexation. (Local)

Sponsors: Senator Hartsell.

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

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF LANDIS.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Landis:

BEGINNING at a point in the western margin of Chapel Street, the southeastern corner of Roy Sadruddin (Deed Book 652, page 858, Rowan County Registry) and runs thence a line North 88 deg. 30 min. West 928.20 feet to a point in the eastern margin of the right-of-way of the Norfolk-Southern Railroad; thence with the eastern margin of said right-of-way and the western margin of Troy L. Day in a northerly direction 2600 feet to a point in the current Town Limits of the Town of Landis; thence a line with the Town Limits of the Town of Landis in a southeasterly direction 1180 feet to a point in the western margin of Chapel Street, Georgia Whitaker's eastern boundary; thence a line with the western margin of Chapel Street and the eastern margin of Georgia Whitaker and Troy Day in a southerly direction 840 feet to a point, the northeastern corner of James Earl McGee; thence a line with the western margin of Chapel Street and the eastern margin of McGee, Janice Evans and others, Troy Day, David Simpson, Brenda Baxter, Keith Williams, Johnsie Baxter and Roy Sadruddin 1020 feet to a point, Roy Sadruddin's southeastern corner, the point of BEGINNING.

Section 2. This act is effective June 30, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1246

Short Title: Modify Davie Room Tax Use. (Local)

Sponsors: Representative Howard.

Referred to: Local and Regional Government II, if favorable, Finance.

May 11, 1998

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH DAVIE OCCUPANCY TAX PROCEEDS MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 928 of the 1989 Session Laws reads as rewritten:

"Section 1. ~~Occupancy~~ Davie County occupancy tax.

(a) Authorization and Scope. -- The Davie County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) ~~Collection.~~ Administration. -- A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county.~~

~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax administrator in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county tax administrator under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and use of tax revenue. -- Davie County shall, on a monthly basis, deposit in a special account ~~thirty-three and one-third percent (33-1/3%)~~ at least fifty percent (50%) of the net proceeds of the occupancy tax. Funds in the special account may be used only to promote travel and tourism in Davie County and to finance tourism related capital projects in the county. However, any tax proceeds in the special account that have not been appropriated after three years following the date they were deposited in the account shall be remitted to the general fund of Davie County and may be used for any lawful purpose.

Davie County shall, on a monthly basis, remit the remaining ~~sixty-six and two-thirds percent (66-2/3) of the~~ net proceeds of the tax to its general funds and may use these funds for any lawful purpose. ~~As used in this subsection, "net proceeds" means gross proceeds, including penalties and interest, less the cost to the county of administering and collecting the tax, as determined by the finance office.~~ The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Davie County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, and Section 6 of S.L. 1997-410, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Davie, Madison, Nash, Person, Randolph, and Scotland Counties."

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

FISCAL ANALYSIS MEMORANDUM

DATE: June 17, 1998

TO: Senate Finance Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: H.B. 1246 (S.B. 1102) Modify Davie Room Tax Due

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES					

No General Fund Impact Expected

Modifies How Davie Room Tax is Used

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Davie County Government

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY: The bill modifies the use of Davie County room taxes. Currently, approximately 33% of the net room tax proceeds are used for travel and tourism in Davie County (including tourism related capital projects). The balance is deposited in the general fund. Under the bill, at least 50% of the net proceeds must be used for travel and tourism, with the balance available to the general fund. The bill also defines the percentage (7%) of the gross proceeds that can be retained by the county to cover the costs of administration and collecting the tax. The bill modernizes the local act by incorporating the uniform provisions for county room occupancy taxes, and incorporates a formal definition of "promoting travel and tourism."

ASSUMPTIONS AND METHODOLOGY: Under current law Davie County collects a 3% occupancy tax. According the Davie County Finance Office, the occupancy tax proceeds have remained relatively constant, with revenue of $32,464 in 1995-6 and $33,168 in 1996-7. Collections through May of 1998 are $31,689. The county anticipates 1997-8 revenue of approximately $34,689. This creates a three year average revenue stream of $33,440. Under current law approximately $11,147 of that amount had to be deposited in a special account for travel and tourism activities. Under the bill, the amount dedicated to travel and tourism would increase to $16,720. No substantial increase in the number of rooms available is expected.

EXPLANATION OF HOUSE BILL 1246:
Modify Davie Room Tax Use

To: Senate Finance Committee
From: Cindy Avrette, Committee Counsel
Date: June 17, 1998
Sponsor: Rep. Howard

This bill increases the amount of the occupancy tax net proceeds Davie County must use to promote travel and tourism in Davie County. It also modernizes the language in the current local authorizing legislation.

The General Assembly authorized Davie County to levy a 3% occupancy tax in 1989. The legislation requires that one-third of the net proceeds from the tax be used to promote travel and tourism and to finance tourism related capital projects. The remaining two-thirds may be used for any lawful purpose. This bill proposes to increase the percentage of the net proceeds that must be used for travel and tourism from 33.3% to at least 50%. The remaining net proceeds may continue to be used for any lawful purpose.

In 1997, the General Assembly enacted G.S. 153A-155. That statute sets forth the uniform provisions for county room occupancy taxes. The uniform provisions address the following points:

- The room occupancy tax may be levied only by resolution.
- The room occupancy tax is collected by the operator of businesses subject to the tax. An operator who collects the tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax. Under current law, there is no discount allowed retailers who collect the State sales and use tax.
- The taxing county administers the room occupancy tax.
- The penalties for failing to file a return or pay the tax are the same as for the sales tax. Hotels and motels are already subject to the sales tax and its penalties. The relevant penalties are as follows: Failure to file return is 5% per month up to a maximum of 25%; Failure to pay tax is 10%; Negligent failure to comply with the law is 10%, but may be 25% if the negligence resulted in a substantial understatement of tax; Fraud is 50%; Intentional tax evasion is a Class I felony; and Intentional failure to collect, file, or pay is a Class 1 misdemeanor. Under the current local act, the penalty is $10 for each day's omission plus an additional penalty equal to 5% of the tax due if the return is more than 30 days late. The county board of commissioners may waive the penalties.
- The room occupancy tax may be repealed by resolution.

The bill modernizes the local act by incorporating the uniform provisions contained in G.S. 153A-155 (Section 2), repealing the redundant provisions in the

current local act, and incorporating a definition for "net proceeds" and "promote travel and tourism". The definition of "net proceeds" limits the county's cost of collecting and administering the tax to 7% of the amount collected. The term "promote travel and tourism" means "to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area." The term also includes administrative expenses incurred in engaging in the listed activities.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1102*

Short Title: Modify Davie Room Tax Use. (Local)

Sponsors: Senator Cochrane.

Referred to: Finance.

May 13, 1998

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH DAVIE OCCUPANCY TAX PROCEEDS MAY BE USED AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 928 of the 1989 Session Laws reads as rewritten:

"Section 1. ~~Occupancy~~ Davie County occupancy tax.

(a) Authorization and Scope. -- The Davie County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) ~~Collection.~~ Administration. -- A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county.~~

~~The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax administrator in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county tax administrator under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and use of tax revenue. -- Davie County shall, on a monthly basis, deposit in a special account ~~thirty-three and one-third percent (33-1/3%)~~ at least fifty percent (50%) of the net proceeds of the occupancy tax. Funds in the special account may be used only to promote travel and tourism in Davie County and to finance tourism related capital projects in the county. However, any tax proceeds in the special account that have not been appropriated after three years following the date they were deposited in the account shall be remitted to the general fund of Davie County and may be used for any lawful purpose.

Davie County shall, on a monthly basis, remit the remaining ~~sixty-six and two-thirds percent (66-2/3) of the~~ net proceeds of the tax to its general funds and may use these funds for any lawful purpose. ~~As used in this subsection, "net proceeds" means gross proceeds, including penalties and interest, less the cost to the county of administering and collecting the tax, as determined by the finance office.~~ The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Davie County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, and Section 6 of S.L. 1997-410, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Davie, Madison, Nash, Person, Randolph, and Scotland Counties."

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

(attachment #2)
11AM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/18/'98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Billy Dowd	DOR
Doug Rogers	NCDOT
J.W. Hall	DOC
Tommy Griffin	C.S.C. Cumberland Co.
Jonathan Morgan	NCIMED
Jim Long	NCAFI
Alice Garland	Electricities
Doug Miskew	IBM
Crissy Parker	Bone & Associates
BILL SCOGGIN	NC BAR ASSOC.
Zack Sexton	Speechs Office

VISITOR REGISTRATION SHEET

11AM

SENATE FINANCE COMMITTEE

6/18/'98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

11AM

SENATE FINANCE COMMITTEE

6/18/'98

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

11 AM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/18/'98

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert C. Wasson	Office of the Governor
Jay Hare	DOR
Sabra Faires	Dept of Revenue
Rhonda Raney	NCACDC
Kamlyn Jones	ECU - (OCME)
MEG Gilliland	ECU-SOM Forensic Pathologist
John Butts	NC Coroner
[illegible]	NCMed Soc.
Martyn Johnson	NCDOC
[illegible]	NCDOR
[illegible]	OSBM

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 18, 1998

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

FAVORABLE

H.B. **1246** Modify Davie Room Tax Use
Sequential Referral: None
Recommended Referral: None

S.B. **1333** Landis Annexation
Sequential Referral: none
Recommended Referral: none

S.B. **1426** Increase Autopsy Fee
Sequential Referral: None
Recommended Referral: Appropriations

S.B. **1450** Community Festival Tax Exemption
Sequential Referral: None
Recommended Referral: Appropriations

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

S.B. **1410** Chadbourn Annexation
Draft Number: PCS6843
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1569** Economic Opportunity Act of 1998
Draft Number: PCSX9750
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: None

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 23, 1998

12 NOON - ROOM 544

SB 77 - Sales Tax Refund for Schools - Sen. Winner

SB 1150 - Amend Local Sales Tax - Sen. Dalton

SB 1569 - Economic Opportunity Act of 1998 - Sen. Hoyle

HB 1367 - Sales Tax Changes - Rep. Hill

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 23, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, June 23,1998, at 12 noon in Room 544 with Senator David Hoyle presiding. There were 25 committee members present.

S.B. 77 - Sales Tax Refund for Schools.

Senator Winner was recognized to explain her bill and offered a Committee Substitute which was adopted by the Committee on motion by Senator Purcell. After Senator Winner's explanation and discussion by the committee members, on motion by Senator Albertson, this Committee Sub was given a Favorable Report. Copy of original Bill, Committee Sub., Explanation and Fiscal Note included in the Minutes.

S.B. 1150 - Amend Local Sales Tax.

Senator Dalton was recognized to explain his bill and offered a Committee Substitute which was adopted by the Committee on motion by Senator Rand. After explanation and discussion, Senator Ballantine moved for a Favorable Report for the Committee Sub and the motion was passed by the Committee. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

S.B. 1569 - Economic Opportunity Act of 1998.

This bill had previously been discussed and voted on and was referred back to Finance for "fine tuning." Senator Hoyle moved for adoption of new Committee Sub and the motion carried. On motion by Senator Rand, the new Committee Sub was given a Favorable Report. Copy of Bill, new Committee Sub and Explanation included in the Minutes.

H.B. 1367 - Sales Tax Changes.

Representative Hill was recognized to explain his bill. Senator Kerr offered an Amendment and on motion by Senator Soles, the Amendment was adopted by the Committee. After a general discussion by the Committee members, the meeting was adjourned with no vote taken on H.B. 1367. Copy of Bill, Amendment, Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 77*

Short Title: Sales Tax Refund for Schools. (Public)

Sponsors: Senators Winner, Lee, Dannelly, Hartsell, Lucas, Perdue; Conder, Cooper, Dalton, and Odom.

Referred to: Finance.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL BOARDS OF EDUCATION TO RECEIVE A REFUND ON SALES TAX PAID FOR ITEMS PURCHASED FROM THE CAPITAL OUTLAY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use tax paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit, but only with respect to sales and use tax paid by it on purchases made from its capital outlay fund under G.S. 115C-426.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:

a. It has all of the rights of a municipality.

b. A local act of the General Assembly declares it to be a municipality.

c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

Section 2. This act becomes effective July 1, 1997, and applies to purchases made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 77*
Proposed Committee Substitute S77-PCS9751-LC

Short Title: Sales Tax Refund for Schools. (Public)

Sponsors:

Referred to:

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL BOARDS OF EDUCATION TO RECEIVE REFUNDS OF SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use tax paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit.

(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
a. It has all of the rights of a municipality.
b. A local act of the General Assembly declares it to be a municipality.
c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill.

(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

Section 2. This act becomes effective July 1, 1998, and applies to purchases made on or after that date.

EXPLANATION OF SENATE BILL 77:
Sales Tax Refunds for Schools (PCS)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 23, 1998
SPONSOR: Senator Winner

Senate Bill 77 would add local school administrative units to the list of governmental entities that may obtain an annual refund of the State and local sales and use taxes paid by them. The bill becomes effective July 1, 1998, and applies to purchases made on or after that date. The proposed committee substitute changes the effective date and removes the original bill's limitation to taxes paid on capital outlay purchases.

The refunds apply to direct purchases of tangible personal property. They also apply to sales and use tax liability indirectly incurred by a local school administrative unit on building materials, supplies, fixtures, and equipment that become a part of any building that is owned or leased by the unit and is being built, altered, or repaired for use by the unit. To obtain a sales and use tax refund, a local school administrative unit must request the refund in writing within six months after the end of the unit's fiscal year. The request must include any information and documentation required by the Secretary of Revenue.

Prior to 1961, the State granted sales and use tax exemptions to state and local governmental entities, including public schools, and nonprofit entities. Because of the number of abuses involving the exemption and the difficulty of auditing these transactions, the legislature changed the law in 1961 to allow refunds as opposed to outright exemptions. The statute lists those entities that are entitled to a refund. Nonprofit educational institutions, as well as most other nonprofit entities, are entitled to a semiannual refund of State and local sales and use tax.

The General Assembly did not include State agencies in the list of entities entitled to an annual refund of State and local sales taxes because the refund process would not benefit the General Fund, from which the agencies receive their appropriations, and would create unnecessary paperwork for the agencies. The General Assembly did not include public schools in the list of entities entitled to an annual refund for similar reasons. First, public school books and school lunches are exempt from sales tax. Second, most of the operating money for public schools comes from the General Fund, although most of the capital money comes from the counties.

Under current law, although a school board cannot receive sales tax refunds, a county would be entitled to a refund of State sales and use taxes paid if it purchased items on behalf of its school board. More than one-half of the counties have statutory authority to acquire property on behalf of their school boards and thus may receive sales tax refunds if they exercise that authority. The other counties do not have this authority, although the Attorney General's Office has stated that they may acquire property on behalf of their school boards if they enter into an interlocal agreement with the school board. Under this bill, the school board could receive the refunds directly, without having to arrange for the county to acquire the property and apply for the refunds on its behalf.

Latest ed.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 77 (Proposed Senate Finance Committee Substitute)
BILL TITLE: Sales Tax Refunds for Schools

FISCAL IMPACT

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

	($Million)				
	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES:					
State General Fund		**-$14.8**	**-$15.0**	**-$14.4**	**-$12.6**
Local Government		**- 7.4**	**- 7.5**	**- 7.2**	**- 6.3**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The refunds are administered by the Department of Revenue.

EFFECTIVE DATE: July 1, 1998.

AMENDMENT SUMMARY: Cities, counties, and other specifically named local government authorities are allowed an annual refund for state and local sales taxes paid. The amendment would add local school administrative units to the list.

ASSUMPTIONS AND METHODOLOGY: The estimate for the current expense portion was based on a review of data shown in the *Statistical Profile: 1997* publication of the Department of Public Instruction. The data shown included current expense by spending category for the 1995-96 fiscal year. That data was grown by 6.5% per year to project the amount for future years. The analysis excluded the "materials and supplies" numbers for the "Child Nutrition" and "Transportation of Pupils" categories because public schools purchase food for use in a cafeteria tax-free under a resale certificate and the fact that the sales tax does not apply to motor fuel purchases.

For capital outlay the 1995-96 numbers were grown by 6.5% and amounts were added for the $1.8 billion school bond authorization. The analysis assumed that the remaining $900 million of authorized bonds would be issued in equal annual increments in March of each year. In addition, it was assumed that 30% of the bond proceeds would be spent in the first fiscal year after the bonds were sold, 40% the next year, and 30% the following year. Finally, the tangible personal property portion of capital outlay was assumed to be 50% of the total cost.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1150*

Short Title: Amend Local Sales Tax. (Public)

Sponsors: Senators Dalton, Winner, Lee; Ballance, Blust, Hartsell, Jenkins, Jordan, Kinnaird, Lucas, Odom, Phillips, Reeves, Weinstein, and Wellons.

Referred to: Education/Higher Education.

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-487(a) reads as rewritten:

"(a) Except as provided in subsection ~~(c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and~~ (c) of this section, thirty percent (30%) of the revenue received by a county from ~~these taxes in the next 10 fiscal years in which the taxes are in effect in the county~~ additional one-half percent (1/2%) sales and use taxes levied under this Article may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

Section 2. G.S. 105-502(a) reads as rewritten:

"(a) Sixty percent (60%) of the revenue received by a county under this Article ~~during the first 16 fiscal years in which the tax is in effect~~ may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1150*
Proposed Committee Substitute S1150-PCSA870-LC

Short Title: Amend Local Sales Tax. (Public)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO DELAY THE SUNSET OF THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-487(a) reads as rewritten:

"(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next ~~10~~ 23 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

Section 2. G.S. 105-502(a) reads as rewritten:

"(a) Sixty percent (60%) of the revenue received by a county under this Article during the first ~~16~~ 25 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

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

EXPLANATION OF SENATE BILL 1150:
Proposed Committee Substitute
Amend Local Sales Tax

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 22, 1998
SPONSOR: Senator Dalton
Recommendation of the Education Oversight Committe

There are three Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax, Article 40 authorizes a half-cent tax, and Article 42 authorizes an additional half-cent tax. Article 40, enacted in 1983, and Article 42, enacted in 1986, each provided that for the first ten fiscal years in which the tax was in effect in a county, the county was required to use a percentage of the tax revenue for public school capital outlay purposes, including retirement of outstanding debt. In 1993, the earmarking was extended for an additional five years. The first earmarking expires this year; the second will expire in 2002.

The original bill made the earmarking permanent. The **proposed committee substitute for Senate Bill 1150** extends the time periods under Articles 40 and 42 so that the earmarking will continue to the year 2011. For these additional years, counties will be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40) and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes. In 1985, the General Assembly exempted Burke County from the restriction that it use a percentage of the first half-cent local sales tax for public school capital outlay purposes. This exemption will remain in effect.

If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission to authorize it to use the money for any public purposes. In making its decision, the Commission must consider not only the public school capital needs but also the other capital needs of the county.

Senate Bill 1150 also defines public school capital outlay purposes as the term is defined in the School Budget and Fiscal Control Act. The term is defined broadly in this act to include appropriations for the acquisition of real property and building s for school purposes as well as the acquisition of furniture, computers, equipment, buses, etc. The Local Government Commission currently

interprets the term as it is defined in the School Budget and Fiscal Control Act. Therefore, this clarification of the law will not change the way counties are currently using the money.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1150 (Proposed Senate Committee Substitute)
SHORT TITLE: Amend Local Sales Tax

FISCAL IMPACT

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

SUMMARY OF COMMITTEE SUBSTITUTE: (1) The 1983 General Assembly authorized counties to levy a ½ cent local sales tax, to be collected by the State and distributed on a per capita basis to each county area., with the requirement that 40% of the county government share should be allocated to school capital projects for the first 5 years and 30% for the next 5 years. The 1993 General Assembly extended the earmarking 5 more years. This earmarking ends with the 1997-98 fiscal year. **The Committee substitute would extend the earmarking for an additional 13 years. For all but a handful of counties the earmarking would be end on July 1, 2011**. (2) The 1986 General Assembly authorized counties to levy a ½ cent local sales tax, to be distributed on a per capita basis, with the requirement that a certain percentage of the county government portion be spent on school facilities for an 11-year period. The earmarking share for the final year was 60%. The 1993 General Assembly extended the 60% earmarking another 5 years. This earmarking will end with the 2001-02 fiscal year. **The Committee substitute would extend the earmarking an additional 9 years. This means that for all counties this earmarking would end July 1, 2011.**

EFFECTIVE DATE: July 1, 1998.

ASSUMPTIONS AND METHODOLOGY: There is no direct impact on state or local revenue or expenditures. The effect of the bill would be to extend the required earmarking of the two ½ cent local option sales taxes. For information purposes, an FRD estimate of the earmarked portion of the two taxes for the 1998-99 fiscal year is $233.8 million. In addition, from 1998-84 to 1997-98 the estimated total required earmarking has amounted to $2.0 billion.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: June 22, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"§ 143B-437.04. ~~Economic~~ Community development block grants.

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).
(6) Owner. -- A person who owns or leases a recycling facility.
(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.
(8) Purchase. -- Defined in section 179 of the Code.
(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"§ 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.
(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.
(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.
(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred

fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000

2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this

Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the

chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98
Proposed Committee Substitute S1569-PCS4692-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES

PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For

all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county

income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce

under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the

credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-

year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may,

however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of

this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year

in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created

up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the

program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State and (ii) at which the air courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or

handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling

facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling

facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf

of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by

this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1569, 2nd Edition[1]:
Economic Opportunity Act of 1998

TO: House and Senate Finance Committees
FROM: Martha H. Harris, Staff Attorney
DATE: June 23, 1998
SPONSOR: Senator Hoyle

This bill is designed to promote economic development throughout the State in five ways:

1. It makes various amendments to the William S. Lee Act to encourage large investments and remove technical problems with the Act.
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities.
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State.
4. To encourage development of air courier hubs, it provides sales tax and property tax reductions for air couriers and provides a temporary bidding law exemption for specific projects of the Piedmont Triad International Airport Authority.
5. To encourage development of the recycling industry in Tier One counties, it provides an investment tax credit for large and major recycling facilities that locate in Tier One counties and, in addition, it provides a refundable reinvestment credit and sales tax reductions for major recycling facilities.

William S. Lee Act Modifications. Part I of the bill makes a number of changes to the William S. Lee Quality Jobs and Business Expansion Act, some technical and some substantive. Unless a different date is given, these changes all become effective beginning with the 1999 tax year.

Part I makes two changes to the central administrative office credit that was enacted last year. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirement for creating new jobs if the jobs begin before the office property is in service but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

---

[1] The House companion to this bill is House Bill 1688, introduced by Representative Gray.

Part I also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service from May through September would receive more benefit than a project put in service from November through March. This change goes into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more. Otherwise, the current law allows the credit only for machinery and equipment the taxpayer acquires under a capital lease or purchases and capitalizes.

Part I expands the credit for research and development. The existing credit for research and development piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The bill modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

Part I simplifies the credit for worker training. In order to qualify under current law for the credit for worker training, the taxpayer must get its planned training certified in advance by the Department of Community Colleges. This requirement has been difficult both for taxpayers and for the Department of Community Colleges. The bill replaces the current credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment.

Finally, Part I makes a number of administrative and technical changes to the William S. Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. Most states with similar incentives laws require a fee, and their fees tend to be much higher. The application fee would become effective January 1, 1999. Second, the bill extends the credit carryforward period for investments over $150 million. Currently, the credit may not reduce the taxpayer's tax liability by more than half, and any excess may be carried forward for up to five years. The bill provides that for large investments, the excess may be carried forward for up to 20 years. Third, the bill clarifies that credits are allowed only for new and expanding businesses, not for existing businesses that are sold to another taxpayer. The bill provides an exception, however, for a business that has closed, has filed a federally required

notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business will be able to qualify for the credits to the same extent as a new business. Fourth, the bill clarifies the definitions of the different types of businesses that are eligible for credits[2] and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. Part I of the bill provides for the designation of economically distressed areas located within municipalities as State development zones, and authorizes enhanced incentives for businesses that locate in a development zone. This change becomes effective beginning with the 1999 tax year. The bill defines a development zone as an area (1) consisting of one or more contiguous census tracts and block groups, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four years. The bill provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with guidelines established by the Department of Commerce.

---

[2] The bill changes statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system. These references are used in the William S. Lee act to define various types of businesses. The bill also changes the term "manufacturing and processing" to "manufacturing" and the term "warehousing and distribution" to "warehousing and wholesale trade" to conform to the NAICS. In April 1997, the United States Office of Management and Budget announced the adoption of a new industry classification replacing the SIC, a system used to classify most of the data we have about industries or kinds of business in our economy. The updating of industry classifications is nothing new. Since its origination in the 1930s, the SIC system has been revised or updated every 10 or 15 years to reflect new developments in the American economy and to address problems identified by data users and statistical agencies. It was last revised in 1987.

Infrastructure Funds. Part II of the bill states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $32 million, $18 million for the Fund and $14 million for the Utility Account. Under current law, money in the Utility Account can be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The bill would expand the scope of the Utility Account to include Tier Two counties.

Under current law, the Industrial Development Fund provides funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds may be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three Counties are required to match the State funds on a $1/$3 basis. The funding is capped at $4,000 per job to be created and $400,000 per project. The bill would raise the per-job cap to $5,000 and the per-project cap to $500,000. The bill would also expand the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade.

Under current law, funds in the Industrial Development Fund and the Utility Account are used for grants to local governments and, in some cases, loans to businesses through the local government and a bank that matches the loan. The bill would clarify that a local government that receives funds, may, if necessary, use up to 2% of the funds to verify that the funds are used as required by law and otherwise to administer the grant or loan.

Air Courier Hubs. Part III of the bill provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the bill provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the bill provides a sales tax exemption for sales to an interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, the bill provides a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where the air courier allocates for property tax purposes more than 60% of its North

Carolina aircraft value and where it receives packages from consolidation locations for sorting and distribution.

Part III also grants a bidding law exemption for the Piedmont Triad International Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the bill provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land near (and in the same county as) the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV provides an investment tax credit for both large and major recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the William S. Lee Act. The recycling facility investment tax credit differs from the Bill Lee Act credit in the following ways:

1. The Bill Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of the cost and the major recycling facility credit is equal to 50% of the cost.
2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease the machinery and equipment, rather than at the time the machinery and equipment are placed in service, as under the Bill Lee Act. If the recycling facility fails to put the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.
3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.

4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to cranes, foundations, transportation equipment, and materials handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales

tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, Part IV provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV provides for major recycling facilities an expanded version of the existing property tax exemption for property used for recycling, effective beginning with the 1999-20 property tax year. Under current law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. The bill would provide that, for major recycling facilities only, the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a major recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1367

Short Title: Sales Tax Changes. (Public)

Sponsors: Representatives Hill, Brawley, Cansler, Capps, Gray, Neely, Ramsey, C. Wilson; Allred, Church, Davis, Shubert, Warner, and Yongue.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax

due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- ~~Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a

certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

"(f) ~~Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

"(4b) A person who sells tangible personal property at a ~~flea~~ specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the ~~flea~~ specialty market. ~~A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.~~ The term "specialty market" has the same meaning as defined in G.S. 66-250."

Section 6. G.S. 66-252 reads as rewritten:

"**§ 66-252. Display and possession of ~~retail sales tax license.~~ certificate of registration.**

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the ~~license~~ certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license,~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

(1) A copy of the ~~license.~~ certificate.

(2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"**§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"**§ 66-257. Misdemeanor violations.**

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license,~~ certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective January 1, 1999. Sections 2 through 8 of this act become effective July 1, 1998. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1367

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

H1367-ARB-1 Page 1 of __

Date_____,1998

Comm. Sub. [ ]
Amends Title [YES]

Senator _____

moves to amend the bill on page 1, line 2, by deleting the words "THRESHOLD AND" and substituting the word "THRESHOLD,";

and on page 1, line 3, by deleting the word "LICENSE." and substituting the words "LICENSE, AND TO OFFSET THE RESULTING REVENUE LOSS BY INCREASING THE ONE TIME COST TO OBTAIN A CERTIFICATE OF REGISTRATION.";

and on page 3, lines 22 and 23, by deleting "fifteen dollars ($15.00)" and substituting "fifty dollars ($50.00)";

and on page 5, line 32, by deleting "January 1, 1999." and substituting "July 1, 1999.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 1367:
Sales Tax Changes

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1998
SPONSOR: Representative Hill

House Bill 1367 makes three changes to the sales tax statutes that the Department of Revenue requested the Revenue Laws Study Committee to recommend:

- It raises the sales tax quarterly threshold from $50 to $100.
- It repeals the annual wholesale sales tax license.
- It changes the name of the retail sales tax license to certificate of registration.

Sales Tax Quarterly Threshold

Under current law, taxpayers that are liable for less than $50.00 a month in State and local sales and use taxes may file returns and remit the sales and use taxes owed on a quarterly basis. Taxpayers that are consistently liable for at least $20,000 a month in State and local sales and use taxes must file returns and remit taxes on a semi-monthly basis. All other taxpayers must file returns and remit taxes on a monthly basis.

Section 1 of the bill increases the sales tax quarterly threshold from $50 to $100. This change means that approximately 10,000 taxpayers that are now filing monthly sales and use tax returns will be able to file quarterly returns. The change will reduce the number of returns currently being filed by one-third. The threshold was last increased in 1991 from $25 to $50. This section becomes effective January 1, 1999. This change in the law will mean that approximately $2 million that would have been collected in fiscal year 1998-99 will not be collected until fiscal year 1999-00 because two months of collections are shifted into the 1999-00 fiscal year.

Repeal of the Wholesale Sales Tax License

Under current law, a wholesale merchant must obtain both a wholesale sales tax license and a certificate of registration, referred to in the statute as a retail sales tax license. The form for the two licenses is the same form. The information necessary to obtain both of these licenses is the same. The only difference is that the wholesale sales tax license is an annual license that costs $25. The certificate of registration needs to be acquired only once and it costs $15.

Section 2 of the bill repeals the wholesale sales tax license. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes contains one statute and that

statute imposes an annual privilege license tax of $25 on wholesale merchants. The Department does not need the information from this license because the wholesale merchant has already provided the Department with the information it needs on the certificate of registration. The tax is also expensive to collect and document and it is a nuisance tax for wholesale businesses to report and pay.

The statute being repealed contains a couple of other provisions that are also duplicated by other statutes in the Sales and Use Tax Article. G.S. 105-164.25 requires wholesale merchants to retain a duplicate copy of each bill of sale for a period of at least three years. G.S. 105-164.26 establishes the presumption that all gross receipts of a wholesale merchant are considered taxable unless the merchant obtains a certificate of resale from the purchaser. If the merchant does not obtain a certificate of resale from the purchaser, then the purchase is taxable at the rate established by the Sales and Use Tax Article.

Section 3 rewrites the law to clarify that both wholesale merchants and retailers must obtain a certificate of registration before beginning business. Although the statute refers to the certificate as a "retail sales tax license", it must be obtained by both wholesale merchants and retailers because a privilege tax is imposed on both of them under the sales and use tax article.

The section changes the name of the license to a "certificate of registration" because that more accurately reflects the nature of the document. It also corresponds to the name it is most commonly known as in the business community: a "Merchant's Certificate of Registration". Unlike the annual wholesale sales tax license, the certificate of registration needs to be obtained only once. It is valid unless it is revoked because the retailer or wholesale merchant fails to comply with the sales and use tax law. In the case of a retailer, the certificate becomes void if the retailer does not make any sales for a period of 18 months. If the certificate is revoked or becomes void, the retailer or wholesale merchant must register with the Department and obtain a new certificate of registration before engaging in business.

Sections 4 through 8 of the bill make conforming changes in the sales and use tax statutes and in the Article 32 of Chapter 66 of the General Statutes, which governs peddlers, itinerant merchants, and specialty markets. The changes made in sections 2 through 8 of the bill become effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1367

SHORT TITLE: Sales Tax Changes

SPONSOR(S): Representatives Hill, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Wholesale License	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)
Threshold	($2,000,000)				
Net Change	**($3,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**

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

EFFECTIVE DATE: Section 1(threshold) becomes effective January 1, 1999. Sections 2 through 8 become effective July 1, 1998. The remainder is effective when it becomes law.

BILL SUMMARY: This act repeals the annual $25 wholesale license tax. The bill also increases the quarterly filing threshold for sales tax from $50 to $100.

ASSUMPTIONS AND METHODOLOGY:

Wholesale License

Section 1 of the bill repeals the annual $25 wholesale license. The Department of Revenue reports $1.25 million in revenue from this tax each year. Since the Director of the Sales Tax Division projects little or no growth in wholesale license revenues, this memo assumes a flat growth rate for this license.

Filing Threshold

Businesses that are liable for less than $50 in sales and use tax remit this tax to the Department of Revenue on a quarterly basis. The bill raises the filing threshold from $50 to $100 beginning January 1, 1999. After analyzing sales and use tax collections and the number of accounts by tax bracket, the Department of Revenue's Tax Research Division estimates that this will affect 10,000 taxpayers and will shift $2 million in collections from FY 1998-99 to 1999-00. There is no actual loss of income, but on a cash flow basis there will be $2 million less to spend on the FY 1998-99 budget.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic, Linda Struyk Millsaps
APPROVED BY:

DATE: May 30, 1998

VISITOR REGISTRATION SHEET

SENATE FINANCE | **Tuesday, June 23, 1998**

Name of Committee | **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jan Gatts	VCASL
Chuck Parker	Bone & associates
Roger Bone	" "
Patricia Worten	NCCS
Tommy Stevens	DWQ
Denny Rogers	NC DOT
Jonathan Morgan	NC MED
Weaver Rogers	SBE
Jim Fulton	NCAFT
Richard Beard	Greensboro Chamber of Commerce
Ed Regan	N.C. Assoc. of Co. Comm.

VISITOR REGISTRATION SHEET

SENATE FINANCE **Tuesday, June 23, 1998**

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cavin	BPM HL
Barbara Barnett	Gov. Office
Thad Daise	NCAE
Harriet Dial	NCAE
Bill Wilson	NCAE
Ann Belam	SBE
Ripell Peters	SBE
Lynn Harris	Bar Servs
Katie Adams	CCNC
Meghan Moore	Sierra Club NC
Stephanie Maurin	NC Assoc. of REALTORS

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, June 23, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beryl S. Wade	Gov's Off
Kathy Sawyer	NC Dept. of Commerce
Saba Faires	Dept. of Revenue
Charles Collins	" " "
Andy Sabl	Dept. of Revenue
[illegible]	DOC
Susan Perry Cole	DOC
Willie Riddick	DOR
Patti Stowell	DPR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, June 23, 1998

Monday, November 02, 1998**SENATOR JOHN KERR,**
submits the following with recommendations as to passage:

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

S.B. **77** Sales Tax Refund for Schools.

Draft Number:	PCS9751
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1150** Amend Local Sales Tax.

Draft Number:	PCSA870
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1569** Economic Opportunity Act of 1998.

Draft Number:	PCS4692
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comment: June 23 SB 77 1150 1569

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 24, 1998

12:00 NOON - ROOM 544 LOB

Opening of Meeting - Senator Hoyle, Presiding

Introduction of Pages

BILLS TO BE CONSIDERED:

HB 1367 - Sales Tax Changes - Rep. Hill
SB 1594 - Education Board Sets Cert. Fees - Sen. Lee

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 24, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, June 24, 1998 at 12:00 Noon in Room 544 LOB. There were 22 members of the committee present. Senator David Hoyle, Co-chairman, called the meeting to order and introduced the Pages, they were: Justin Guillory from Raleigh, North Carolina sponsored by Senator Eric Reeves and Jason Phipps from Stedman, North Carolina sponsored by Senator Tony Rand.

S. B. 1594 - Education Board Sets Cert. Fees

Senator Howard Lee came to explain the bill. Senator William Purcell moved for adoption of proposed committee substitute for the purpose of discussion, motion passed. Mr. Jim Barber, Associate Superintendent of Personnel for Department of Public Instruction spoke on the bill. After a time of questions and comments by members of the committee, Senator Leslie Winner moved for a "favorable" report, motion passed. (Copy of Bill, Proposed Committee Substitute, Explanation, Fiscal Note are included in minutes).

H. B. 1367 - Sales Tax Changes was not heard at this Meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:
Visitors Sign In Sheet is Attachment #2
Committee Report is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1594

Short Title: Education Bd. Sets Cert. Fees. (Public)

Sponsors: Senator Lee.

Referred to: Education/Higher Education.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION TO SET TEACHER CERTIFICATION FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296(a) reads as rewritten:

"(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it ~~authorizes: Provided, that the~~ authorizes. The State Board of Education shall also set the application fee for initial certification, renewal, and extension of all certificates.

The State Board of Education shall require each applicant for an initial bachelors degree certificate or graduate degree certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score on a standard examination appropriate and adequate for that purpose. The State Board of Education shall make the standard initial certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1594
Proposed Committee Substitute S1594-PCS3632-LA001

Short Title: Teacher Certification Fees. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPOSE TEACHER CERTIFICATION FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.

(4) Initial application for New, In-State Approved Program Graduate, $55.00.

(5) Initial application for Out-of-State certificate, $85.00.

(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted."

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

EXPLANATION OF SENATE BILL 1594 (PCS):
Teacher Certification Fees

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Lee

The proposed committee substitute for Senate Bill 1594 would amend G.S. 115C-296 by adding a new subsection that would set out a fee schedule for certification of teachers in all public elementary and high schools in the State. Currently the fees are only set out in the State Board of Education Policy Manual and are used to support the personnel in the State Board of Education's certification division. The State Board has indicated that this division is very understaffed. The Bill would also, in effect, increase the following current fees set out in the Policy Manual:

> Application for renewal, extension, addition, upgrade and variation to a a certificate would increase from $45.00 to $55.00.
> Initial application for New, In-State Approved Program Graduate would increase from $45.00 to $55.00.
> Initial application for Out-of-State certificate would increase from $65.00 to $85.00.
> All other applications not listed in the schedule would increase from $65.00 to $85.00.

Although there is currently no statute that establishes the fees for certification or that authorizes the State Board to set fees, it is clear from past budget bills that the Board's budget takes into account the receipts from certification fees. The General Assembly has known about the fees and has approved them each time it has adopted a budget bill since 1975. That year, the State Board adopted a certification fee schedule. The Board has increased the fees several times since 1975, but has never gone through the State's rulemaking procedure. If someone were to challenge the Board's authority to establish certification fees, it is possible a court would accept the position that the Board has implied authority to set and increase fees. If the court rejected this theory, however, the consequences would be that the fees are unenforceable.

Senate Bill 1594 as introduced would have given the State Board of Education the authority to set the application fees for teacher certification.

However, the Board would be required to go through rulemaking to establish these fees, and this process could take a year. The proposed committee substitute sets the fee amounts in the statutes, thus allowing the fee schedule to be effective immediately upon enactment of the bill into law. When a State agency establishes a fee, it is exercising the taxing authority of the State. Therefore an agency may only establish a fee if a statute sets the exact fee amount or if a statute gives the agency the express authority to set the fee.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1594 (Proposed Committee Substitute)

SHORT TITLE: Education Board Sets Certification Fees

SPONSOR(S): Senator Lee

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
DPI receipt	$208,790	$208,790	$208,790	$208,790	$208,790
EXPENDITURES					
DPI budget	$160,000	$124,948	$124,948	$124,948	$138,948
POSITIONS:	4				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Education; Department of Public Instruction

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

BILL SUMMARY: The act establishes a schedule for teacher certification fees.

ASSUMPTIONS AND METHODOLOGY:

Revenue

SB 1594 establishes a fee schedule for the initial certification, renewal, and extension of all teaching certificates for the State Board of Education. In fact, the State Board of Education adopted such a fee schedule for teacher certification in 1975. The current fee schedule charges $45 for first time in-state licenses, upgrades, additions, and renewals; $65 for out-of-state applicants, Junior ROTC, lateral entry, vocational, and provisional licenses; and $30 for miscellaneous administrative changes. This bill gives statutory authority to what the Board has done administratively up till now.

The bill reflects the Board's intention to raise the fees beginning in FY 1998-99 to fund additional certification specialist positions. The Board proposes to increase the $45 fee to $55

and increase the $65 fee to $85 as shown in the chart below. The proposed revenue from SB 1594 was included on page 18 of the Governor's Recommended Changes to the 1998-99 State Budget. Based on FY 1996-97 data, the increased fees will raise an additional $208,790 in receipts each year.

Description	FY 1996-97 Requests	Current Fee	Current Revenue	Proposed Fee	Proposed Revenue
New Out-of-state	4,519	$65	$293,735	$85	$384,115
Additional Experience	1,290	$45	$58,050	$55	$70,950
Employed Alternative Program	5,350	$45	$240,750	$55	$294,250
In-State Additional Educational Level	1,298	$45	$58,410	$55	$71,390
Renewal Non-Employed	1,519	$45	$68,355	$55	$83,545
Employed Validation	410	$45	$18,450	$55	$22,550
Initial In-State	1,974	$45	$88,830	$55	$108,570
Total Revenue			**$826,580**		**$1,035,370**
Net Revenue Gain					**$208,790**

Expenditure

The additional revenue will be used to add four Certification Specialists (Grade 65) to the Teacher Licensure Section to handle the 6 to 8 week backlog in teacher certification requests. These four positions are requested in the Governor's Recommended Changes to the 1998-99 State Budget. The projected budget for these positions is as follows:

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Salaries	$97,232	$97,232	$97,232	$97,232	$97,232
Social Security	7,440	7,440	7,440	7,440	7,440
Retirement	10,532	10,532	10,532	10,532	10,532
Medical Insurance	6,944	6,944	6,944	6,944	6,944
Transportation ground - in state	11,052				
Telephone	1,200	1,200	1,200	1,200	1,200
General Office Supplies	1,600	1,600	1,600	1,600	1,600
Furniture - Office	10,000				
Equipment - Computers	14,000				14,000
Total	$160,000	$124,948	$124,948	$124,948	$138,948

The salary of a Certification Specialist is budgeted at the minimum level of $24,308 per year. No increase in salary or benefits is included in the projection, but receipts are sufficient to cover any increases. The first year budget includes one time cost for furniture, computers and transportation. The budget reflects that the computers will be replaced in four years.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: June 23, 1998

(Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/24/'98

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Horne	Commissioner Town of Pink Hill
Carol Sykes	Town Clerk - Town of Pink Hill
[signature]	[illegible]
Gary Looper	Walkertown
Tom Southern	Walkertown
Horace Warner	Walkertown
Jane Nelson	Morehead City
John Nelson	Commissioner - Town of Morehead City
Beth Hamrick	Town Clerk - Mint Hill
Todd Lamb	Mint Hill Town Administrator
Danny Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/24/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Walter B. Newman	Mayor Town Marion
MAURICE MOODY	TOWN OF SYLVA
Ann Cade	NCRMA
[signature]	N.C.A.F.I.
[signature]	Moore & Van Allen

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 24, 1998

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

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

S.B. **1594** Education Bd. Sets Cert. Fees.

Draft Number:	PCS3632
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: None

AGENDA

SENATE FINANCE COMMITTEE MEETING

Thursday, June 25, 1998

9:30 A.M. - ROOM 643

SB 1552	**Changes to the Notary Public Act**	**Sen. Kerr**
SB 1554	**Modify Controlled Substances Tax**	**Sen. Rand**

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 25, 1998

9:30 A.M. - ROOM 643

The Senate Finance Committee met on Thursday, June 25,1998, at 9:30 A.M. in Room 643 with Senator John Kerr presiding. There were 17 committee members present. Pages assisting with the meeting were Hunter Moore from Louisburg, sponsored by Senator Wellons, and Femi David-Yerumo, Jr. from Durham, sponsored by Senator Lucas.

S.B. 1554 - Modify Controlled Substances Tax.

Senator Rand was recognized to explain his bill. After a brief discussion, Senator Weinstein moved for a Favorable Report and the motion carried. Copy of Bill and Explanation included in the Minutes.

S. B. 1199 - Pharmacy Bd./Refund Fees.

Senator Kerr's S.B. 1199 was added to the Agenda and Dascheil D. Propes, with the Department of Insurance, and A. W. Turner, with the Utilities Commission, were recognized to speak in favor of this bill. Ms. Cindy Avrette, Staff Attorney, explained the section of the bill that deals with the Secretary of State's Office. Mr. George Givens spoke on the Water Quality fees part of the bill. Ms. Coleen Sullins, representing the Department of Agriculture, also spoke in support of the bill. After some discussion by the Committee members, Senator Hoyle moved for adoption of a Committee Substitute and the motion passed. On motion by Senator Dannelly, the Committee Sub was given a Favorable Report by the Committee. Copy of original Bill and Committee Sub included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Copy of Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1554

Short Title: Modify Controlled Substances Tax. (Public)

Sponsors: Senators Rand; Cooper, Hoyle, Lee, Odom, Perdue, Plyler, Soles, and Winner.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

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

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

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

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

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly activity of possessing, delivering, selling, or manufacturing large quantities of controlled drugs" and that the statute "does not have such fundamentally punitive

characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause;" and

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

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

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

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

Section 2. In collecting the tax on controlled substances levied in Article 2D of Chapter 105 of the General Statutes, the Secretary of Revenue shall assure that

every affected taxpayer is notified that the lower tax rates apply only until the tax is upheld by the United States Supreme Court, and that the higher rates will then be collected on any tax that accrued before the Court's ruling upholding the tax.

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

EXPLANATION OF SENATE BILL 1554
Modify Controlled Substance Tax

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 25, 1998
SPONSOR: Senator Rand

Senate Bill 1554 changes the controlled substance tax in two ways:

1. Effective when the bill becomes law, it reduces certain tax rates of the excise tax on controlled substance, in order to remove features of the tax found unconstitutional by the United States Court of Appeals for the Fourth Circuit in Lynn v. West.
2. If and when the United States Supreme Court overturns the Lynn decision and upholds the tax, the bill retroactively repeals those reductions, thus raising the rates for the period between the date the bill becomes law and the date the United States Supreme Court upholds the tax.

Retroactive Tax Increase. In my opinion, the second change made by the bill is unconstitutional. Article I, Section 16 of the North Carolina Constitution provides: "No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted." Section 3 of the bill repeals retroactively the rate reductions enacted by Section 1, but only if the United States Supreme Court later upholds the tax. Thus, the bill would tax retrospectively the prior act of possessing certain illegal drugs, which would have been taxed at a lower rate until the Supreme Court decision occurs. Although Section 2 of the bill requires the Secretary of Revenue to notify affected taxpayers of the possible retroactive tax increase, I do not believe this notice makes the retroactive tax constitutional.

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

again notwithstanding the rate reductions. The issues, outlined below, are complex.

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

The double jeopardy clause was not an issue in the Lynn case because only the federal government, not the State, had brought criminal charges against Lynn for illegal drug possession. The double jeopardy clause protects against successive prosecutions by the same sovereign, but not against prosecutions by different sovereigns. The holding in the Lynn case that the tax is a criminal penalty means, however, that North Carolina would not be able to collect the tax from an individual and also prosecute the individual for a criminal drug violation. Therefore, the State has been required to drop criminal charges against some drug defendants who had also been assessed the controlled substance tax.

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

In the Lynn case, the federal court found that all four of these same factors were present in North Carolina's controlled substance tax: a high rate of tax, a deterrent purpose, application only to illegal activity, and no relationship to lawful possession. For this reason, the court ruled that North Carolina's

---

[1] Department of Revenue v. Kurth Ranch, 511 U.S. 767 (1994).
[2] Hudson v. United States, 118 U.S. 488 (1997).

controlled substance tax is a criminal penalty. Section 1 of the bill would lower the tax rates in the hope of addressing that factor. It would be difficult to address the deterrent purpose of the tax, its application only to illegal drug possession, or its lack of a relationship to legal position.

Nearly a kilogram of cocaine was seized from Lynn in 1993. The tax rate was $200 a gram, with a penalty equal to 100% of the tax.[3] Although no evidence of the value of cocaine had been offered, the court found that its market value was $25,000 a kilogram, which translates to $25 a gram. Thus, the court found the tax rate to be eight times the market value of the cocaine, which, when combined with the 100% tax penalty,[4] yielded a total tax that was sixteen times the market value of the cocaine. The tax rate in the Kurth Ranch case, by comparison, was eight times the market value of the drug. The Lynn court's concern with North Carolina's high tax rate was compounded by the fact that the full rate applies no matter how pure or dilute the controlled substance may be.

This bill provides a separate tax rate of $50 a gram for cocaine and changes the tax rate on drugs sold by dosage units from $400 to $200 per ten dosage units. Crack cocaine is sold in dosage units. Based on the court's holding that cocaine's market value is $25 a gram, the proposed rate tax would be twice the market value; when the current 50% penalty is added, the total would be three times the market value. The bill does not address the court's concern that the same tax rate applies whether the substance is pure or dilute.

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

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

---

[3] The tax on marijuana is $3.50 a gram, except for separated stems and stalks, which are taxed at 40¢ a gram. The tax on "low-street-value" drugs is $50.00 for ten dosage units and the tax on other drugs not sold by weight is $400.00 for ten dosages units.

[4] The 100% penalty was reduced to 50% in 1995. The tobacco tax penalty is also 50%.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1199*

Short Title: Pharmacy Bd./Refund Fees. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DIRECT THE BOARD OF PHARMACY TO REFUND FEES ERRONEOUSLY COLLECTED.

Whereas, the Board of Pharmacy charged persons it deemed to be "pharmacy technicians" a registration fee based on an erroneous interpretation of Chapter 231 of the 1997 Session Laws; and

Whereas, the Board of Pharmacy defined the term "pharmacy technician" without proper statutory authority; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Board of Pharmacy shall develop a plan, including a timetable, for the repayment of fees erroneously collected.

Section 2. The Board of Pharmacy shall submit the plan in writing to the Joint Legislative Administrative Procedure Oversight Committee no later than September 1, 1998.

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

SENATE COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

JUN 25 1998

S

ADOPTED D

SENATE BILL 1199*
Proposed Committee Substitute S1199-PCSX9756-RB1

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

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. PUBLIC UTILITIES REGULATORY FEE

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

PART II. INSURANCE REGULATORY CHARGE

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

PART III. SECRETARY OF STATE FEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IV. INCREASE AUTOPSY FEE

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

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

county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000)."

PART V. WATER QUALITY FEES

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

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

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

(1) Major Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of less than 1,000,000 gallons per day shall be seven hundred fifteen dollars ($715.00).

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

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

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

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

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

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

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

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

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

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

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

(e) Other fees under this Article. --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article ~~21B~~ 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection

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

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

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

b. Improve the quality of permits issued;

c. Improve the rate of compliance of permitted activities with environmental standards; and

d. Decrease the length of the processing period for permit applications.

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

be adopted according to the procedures set out in Chapter 150B of the General Statutes.

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

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

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

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

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to

any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

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

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

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

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

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

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

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

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only

upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

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

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

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

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

person resides or has his or its principal place of business, to recover such sums.

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

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

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

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

(13) Repealed by Session Laws 1983, c. 296, s. 6.
(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.
(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.
(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.
(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

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

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

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

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
(2) Fees credited to the Title V Account.
(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
(4) Fees collected under G.S. 143-215.28A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Temporary Certificate, $200.00;

(3) Temporary Certification Renewal, $300.00;

(4) Conditional Certificate, $75.00;

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

(6) Reciprocity Certificate, $100.00;

(6a) Voluntary Conversion Certificate, $50.00;

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

(8) Replacement of Certificate, $20.00;

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

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

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

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

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

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

PART VI. EFFECTIVE DATES

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, June 25, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1554** Modify Controlled Substances Tax.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1199** Pharmacy Bd./Refund Fees.
Draft Number: PCSX9756
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: June 25 SB 1554 1199

(Attachment #1)

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JULY 1, 1998

ROOM 643 LOB - 8:30 A.M.

Opening of Meeting

Introducation of Pages

BILLS TO BE CONSIDERED:

H 1274	Gastonia Special Assessments - Rep. Dickson
H 1278	Certain Counties School Acquisition - Rep. Baddour
H 1284	Alexander/Davidson School Acquisition - Rep. Brown
H 1475	Ocean Isle Beach Annexation - Rep. Redwine
H 1528	Modify Long Beach Room Tax - Rep. Redwine
H 1556	Dunn ETJ - Rep. Davis
H 1594	Franchise Distribution Payment - Rep. Weatherly
S 1514	Hemby Bridge Incorporated - Sen. Plyler
S 1552	Changes to Notary Public Act - Sen. Kerr

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 1, 1998

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met on Wednesday, July 1, 1998 at 8:30 A.M. in Room 643 LOB. There were 14 members of the committee present. Senator John Kerr, Co-chairman, called the meeting to order.

H. B. 1556 - Dunn ETJ

Representative Davis explained the bill. After several questions, Senator David Weinstein moved for a "favorable" report, motion passed. (Copy of the Bill included with Minutes).

HB 1278 - Certain Counties School Acquisition

Representative Baddour came to explain the bill. Senator David Weinstein moved for a "favorable" report, motion carried. (Copy of Bill included in Minutes).

H. B. 1274 - Gastonia Special Assessments

Representative Dub Dickson came to explain the bill. Senator Betsy Cochrane moved for a "favorable" report, motion passed.(Copy of Bill included in Minutes).

H. B. 1594 - Franchise Distribution Payment

Representative John Weatherly explained the bill. Senator Betsy Cochrane moved for a "favorable" report, motion passed. (Copy of Bill included in Minutes).

H. B. 1475 - Ocean Isle Beach Annexation

Representative David Redwine explained the bill. Senator Charlie Dannelly moved for a "favorable" report, motion passed. (Copy of Bill included in Minutes).

H. B. 1528 - Modify Long Beach Room Tax

Representative Redwind explained the bill. Senator Albertson moved for a "favorable" report, motion passed. NOTE: Bill was Held to allow another look to be taken. (Copy of Bill included in Minutes).

H. B. 1284 - Alexander/Davidson School Acquisition

Senator Betsy Cochrane explained the bill for Representative Brown. Senator Cochrane sent forth an amendment and moved that amendment be adopted, motion passed. Senator Virginia Foxx moved for a "favorable as amended" report with notation that bill be rolled into a committee substitute, motion passed. (Copy of Bill, Amendment, Proposed Committee Substitute are included in the Minutes).

S. B. 1514 - Hemby Bridge Incorporated

Senator Aaron Plyer came to explain the bill. Gerry Cohn, Director of Bill Drafting, also added to the explanation of the bill. Senator William Purcell moved for adoption of a committee substitute to the bill for discussion, motion passed. After some questions and comments on the bill, Senator Charlie Dannelly moved for a "favorable" report on the proposed committee substitute, motion passed. (Copy of Bill and Proposed Committee Substitute Bill are included in the Minutes).

At this time, Senator Kerr turned over the meeting to Senator Betsy Cochrane to chair the committee while he explained a bill in the absence of Senator Hoyle the other co-chair.

S. B. 1552 - Changes to Notary Public Act

Senator John Kerr came to explain the bill. He called on Cindy Avrette, Staff Counsel to the Committee, to expand on his explanation of the bill. Ms. Sheila Pope, General Counsel of the Secretary of State's Office, spoke on the bill. After a considerable amount of time spent on questions and answers on particular sections of the bill, it was decided that a subcommittee composed of Senator Patrick Ballantine, Chairman, and Senator Allen Wellons, Senator Walter Dalton and Senator Virginia Foxx be appointed to work with Ms. Pope on concerns expressed by members of the committee on several sections of the bill. The subcommittee is to report back to the full Senate Finance Committee the next week on this bill. (Copy of Bill and Fiscal Note are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #2
Committee Reports are Attachment #3 and #4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1556

Short Title: Dunn Extraterritorial Jurisdiction. (Local)

Sponsors: Representative Davis.

Referred to: Local and Regional Government I, if favorable, Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DUNN.

The General Assembly of North Carolina enacts:

Section 1. In addition to any areas where the City of Dunn exercises extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the City shall have extraterritorial jurisdiction under that Article in the following described area:

Beginning on the south side of Jonesboro Road and running southward along the western margin of Core Road (SR 1806) and intersecting with Highway 55 (SR 1819) crossing Highway 55 and running southward along the eastern margin of property owned by Douglas Parker to the Harnett County/Sampson County line. Following the Harnett County/Sampson County line southward and stopping at U.S. Highway 421.

Section 2. The provisions of G.S. 160A-360(f) shall apply to the area in Section 1 of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1278
Committee Substitute Favorable 6/17/98

Short Title: Wayne School Acquisition. (Local)

Sponsors:

Referred to:

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CALDWELL, LENOIR, MITCHELL AND WAYNE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1274

Short Title: Gastonia Special Assessments. (Local)

Sponsors: Representatives Dickson; and Rayfield.

Referred to: Local and Regional Government II, if favorable, Finance.

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF GASTONIA TO WAIVE WATER AND SEWER SPECIAL ASSESSMENTS ON CERTAIN BENEFITED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The City of Gastonia may waive existing confirmed water assessments, each being in the amount of eight hundred ninety dollars ($890.00), and existing confirmed sewer assessments, each being in the amount of one thousand three hundred eighty-two dollars ($1,382), on parcel numbers 17, 18, 19, and 20, Tax Book 10, Map 62B, as the same appear on file and of record in the Gaston County Register of Deeds Office.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1594*

Short Title: Franchise Distribution Repayment. (Public)

Sponsors: Representatives Weatherly; Clary and Dedmon.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF THE TOWN OF COLUMBUS FOR REPAYMENT OF ERRONEOUS FRANCHISE TAX DISTRIBUTIONS.

Whereas, G.S. 105-116.1 provides for distribution of certain utility franchise tax proceeds to municipalities based on the amount of taxable utility sales within each municipality; and

Whereas, due to an incorrect report by a utility, the Town of Columbus received during a three-year period approximately one hundred eighty-seven thousand dollars ($187,000) of tax proceeds that should have been distributed to a different municipality; and

Whereas, repayment of these funds to which the town was not entitled would create a substantial hardship because of the town's small budget; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Town of Columbus is required to repay only fifty thousand dollars ($50,000) of the one hundred eighty-seven thousand dollars ($187,000) distributed to it erroneously under G.S. 105-116.1.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1475

Short Title: Ocean Isle Beach Annexation. (Local)

Sponsors: Representative Redwine.

Referred to: Local and Regional Government I, if favorable, Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF OCEAN ISLE BEACH.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Ocean Isle Beach:

NORTHERN TRACT

Beginning at an existing iron pipe having NCGS Coordinates of N 65,495.33 and E 2,167,907.41 as shown on survey by Jan K. Dale entitled SURVEY FOR TOWN OF OCEAN ISLE BEACH and dated 28 September 1990. Thence the following calls and distances N 33-02-39 W 2361.29 feet to a point; thence S 39-22-41 W 370.72 feet to a point; thence S 70-32-38 W 1997.26 feet to a point; thence S 86-45-45 W 787.71 feet to a point; thence N 18-29-20 W 145.86 feet to a point; thence N 58-24-18 W 383.59 feet to a point; thence S 76-06-45 W 267.40 feet to a point; thence S 62-12-56 W 194.70 feet to a point; thence N 30-18-42 W 272.03 feet to a point; thence N 06-00-54 E 268.02 feet to a point; thence S 65-31-53 W 700.00 feet to a point; thence S 07-46-34 E 3275.35 feet to a point in the North right-of-way line of Old Georgetown Road (SR 1163); thence along said right-of-way N 66-44-37 E 1671.03 feet to a point; thence 216.25 feet along a curve having a radius of 2894.79 feet; thence N 70-50-02 E 1175.50 feet to a point; thence 1732.70 feet along a curve having a radius of 34407.47 feet, to a point; thence N 5-45-27 W 18.23 feet to a point; thence N 72-49-15 E 843.09 feet to the POINT OF BEGINNING and containing some 275.11 acres more or less, including some 5.14 acres of BEMC right-of-way.

SOUTHERN TRACT

Beginning at the same beginning point as described for Northern Tract; thence S 72-49-15 W 843.09 feet to a point; thence S 5-45-27 E approximately 78.23 feet to a point in the South right-of-way of Old Georgetown Road (SR 1163), said point being the POINT OF BEGINNING of the Southern Tract; thence S 5-45-27 E 3253.00 feet to a point; thence S 5-42-16 E 1237.68 feet to a point; thence S 5-42-16 E 960.73 feet to a point; thence N 83-23-35 W 131.87 feet to a point; thence N 67-47-18 W 396.00 feet to a point; thence N 65-57-18 W 202.62 feet to a point; thence S 89-12-42 W 45.54 feet to a point; thence N 65-40-01 W 196.63 feet to a point; thence N 05-42-16 W 394.68 feet to a point; thence S 77-17-44 W 166.78 feet to a point; thence S 76-56-46 W 1198.91 feet to a point; thence N-03-22-18 W 1177.45 feet to a point; thence S 66-37-38 W 870.22 feet to a point; thence N 03-25-31 E 818.17 feet to a point; thence S 68-04-44 W 658.90 feet to a point; thence N 07-48-09 W 816.40 feet to a point; thence S 89-01-33 W 350.00 feet to a point; thence S 68-17-11 W 1433.42 feet to a point; thence N 07-46-33 W 350.00 feet to a point; thence S 68-17-11 W 1433.42 feet to a point; thence N 07-46-33 W 1418.09 feet to a point on the South right-of-way line of Old Georgetown Road; thence along said right-of-way line N 66-59-02 E 98.56 feet to a point; thence N 66-44-37 E 2306.99 feet to a point; thence 211.87 feet along a curve having a radius of 2834.79 feet to a point; thence N 70-50-02 E 1175.60 feet to a point; thence 1718.54 feet along a curve having a radius of 34347.47 feet to the POINT OF BEGINNING and containing some 384.39 acres, more or less.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1528
Committee Substitute Favorable 6/17/98
PROPOSED SENATE FINANCE COMMITTEE SUBSTITUTE
H1528-CSRBX-2

Short Title: Long Beach Room Tax/North Topsail Beach. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION AND TO AUTHORIZE THE TOWN OF NORTH TOPSAIL BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 3. Occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of North Topsail Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not

apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. North Topsail Beach shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the North Topsail Beach Tourism Development Authority. Of the net proceeds of the tax levied under this section for the first 24 months the tax is in effect, the Authority must use at least twenty-five percent (25%) to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of tourist-related amenities, and to address health, safety, and welfare issues related to tourism. Of the net proceeds of the tax levied after the first 24 months that the tax is in effect, the Authority must use at least two-thirds of the net proceeds of a tax levied under this section to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of tourist-related amenities, and to address health, safety, and welfare issues related to tourism.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 4. Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of North Topsail Beach adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution

creating a North Topsail Beach Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Authority shall be composed of five members, three of whom must be currently active in the promotion of travel and tourism in the town and two of whom must be residents of the town. The board of aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of North Topsail Beach shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 5. Town Administrative Provisions. Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, and Shelby, to the Town of North Topsail Beach, and to the municipalities in Brunswick County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1284
Committee Substitute Favorable 6/10/98

Short Title: Alexander School Acquisition. (Local)

Sponsors:

Referred to:

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALEXANDER AND DAVIDSON COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. Second

H. B. No. 1284 DATE 2-1-98

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

COMMITTEE SUBSTITUTE ✓

Rep.) Cochrane
)
Sen.)

moves to amend the bill on page 1, line 2

( ) WHICH CHANGES THE TITLE

by rewriting That line to read:

" AN ACT TO ALLOW ALEXANDER, DAVIE AND DAVIDSON COUNTIES TO "; and

on page 2, line 9 by inserting between the words "Davidson" and "Duplin" The word "Davie,".

SIGNED Betsy Cochrane

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1284
Committee Substitute Favorable 6/10/98
Proposed Senate Committee Substitute H1284-PCS3153-RK3

Short Title: Certain School Acquisitions. (Local)

Sponsors:

Referred to:

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALEXANDER, DAVIDSON, AND DAVIE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1514

Short Title: Hemby Bridge Incorporated. (Local)

Sponsors: Senator Plyler.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF HEMBY BRIDGE.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Hemby Bridge is enacted as follows:

"CHARTER OF TOWN OF HEMBY BRIDGE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Hemby Bridge, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Hemby Bridge.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Hemby Bridge are as follows:

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Hemby Bridge is the Board of Aldermen, which has five members.

"Sec. 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 1999 provided for by Section 4.1 of this Charter, Bill Baucom, J.C. McClain, and Phil Pressley are appointed members of the Board of Aldermen, and they shall possess and may exercise the powers granted to the Board of Aldermen until their successors are elected or appointed and qualify pursuant to this Charter. The Board of Aldermen shall have three members until the organizational meeting after the 1999 municipal election.

"Sec. 3.3. **Manner of Electing Board of Aldermen; Term of Office.** The qualified voters of the entire Town shall elect the members of the Board of Aldermen. In 1999, five members of the Board of Aldermen are elected. The three persons receiving the highest numbers of votes are elected to four-year terms, and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two persons are elected to four-year terms. In 2003 and quadrennially thereafter, three persons are elected to four-year terms.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** At its organizational meeting after each election, the Board of Aldermen shall elect one of its members as Mayor to serve at the pleasure of the Board of Aldermen.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan election and runoff basis and results determined as provided in G.S. 163-293.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Hemby Bridge operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. This act does not affect the boundaries or taxing power of any fire tax district. Notwithstanding G.S. 69-25.15 or any other provision of law, any area which may be annexed by the Town of Hemby Bridge shall remain in the fire tax district.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Hemby Bridge shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the

sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1514
Proposed Committee Substitute S1514-PCSA873-LB

Short Title: Hemby Bridge Incorporated. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF HEMBY BRIDGE.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Hemby Bridge is enacted as follows:

"CHARTER OF TOWN OF HEMBY BRIDGE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Hemby Bridge, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Hemby Bridge.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Hemby Bridge are as follows:

Beginning at the Center of Stevens Mill Road (1524) and the South fork of Crooked Creek and running E. using the center of Crooked Creek as outside boundary of Proposed Town of Hemby Bridge including property of Larry Love and running 1,051' East down Crooked Creek to property of Manuel Hicks, continuing on 620' down center of Crooked Creek. Creek bends 55 degrees N and runs 858' connecting

with and including property of James and Vera McBride then 90 degrees W. and 295' then 90 degrees S. and continuing down center of Creek 2,640' continuing floodplain that connects with Lot 78 at end of Woody Grove Rd. belonging to Sharon McInnis and SE 315' which is Lot 79 belonging to Nelson and Doris Howlett, containing all homes on Woody Grove Rd., and all homes on Hillcrest Circle. Crooked Creek continues and connects with Lot 50 on Hillcrest Circle belonging to Earl McCoy and continuing S. 165' to property of Doris Button which is Lot 49, continuing S. 165' to Lot 48 belonging to Archie and Rachel Townsend, then to Lot 47 belonging to Jacqueline Oliver and 165' to Lot 46 belonging to Brian and Sara Cook, continuing and including Lot 45 belonging to Enrico Gallinaro, then 165' and including Lot 44 belonging to Holt McAdams, then 165' and including Lot 43, Richard Hicks then 165' to Lot 42, Joseph Young. Continuing S. down Crooked Creek including property of Theodore and Demetra Karres continuing on 83' and including property of Lemuel Cannon to S. 83' to include property of Dolly McKee, then 83' to include property of Dolly McKee, then 83' to include property of J.C. McClain, then 248' including property of Carolina Water Service then 453' to include property of Southern Fabric Exchange, then 83' to property of Sonny and Judy Richardson, then turning out of Creek 90 degrees South and 126' to Center of Indian Trail Fairview Road and connecting to and including property of W.R. McQuay then 90 degrees W. to nail in center of Rd (1520) connecting with and including property of Curtis and Libby Williams then 85' to include property of Charles Conner then 83'W. to include property of Jimmy Stroupe then 83' to include property of Elaine Wooten then 83' to include property of Garnet and Clafton Jones then 83' to include property of Jesse Carson, then 83' to include property of James and Mildred Rowell then 83' to include property of Bob Carpenter. Then 42' crossing and including right-of-way drive belonging to George and Colleen Sherin and 165' to include property of Donald Deese then 83' to include property of Terry King. Continuing W. on Indian Trail Fairview (1520) to include property of Christine Horne then 248' to include property of Ethel Brooks then 165' to include property of N.C. Telephone Co., then 372' to include property of Billy Stegall then 381' to include property of Ruby Williams then 151' to include property of Ethel Brooks then 572' to include property of Jody Stegall continuing W. 165' to include property of Billy and Barbara Thompson then 148' to include property of Don and Catherine Baucom, then 147' to include property of Harrison Spencer then 295' to include property of Charles and Shirley Honey, then 413' to include property of Harold Sherrin then 250' to include property of Robert and Connie Gillespie then 173' to include property of James Robinson continuing 150' to include property of Carol and Billie Cunningham then crossing 3rd Avenue (1566) and continuing W. 248' to include property of Marilyn R. Layman then crossing 2nd Avenue and continuing W. 248' to center of 1st Avenue then 90 degrees S. and 165' to include property of Lee and Carolyn Mayberry, then 90 degrees and 248' crossing back over 2nd Avenue then 269' to center of 3rd Avenue to a nail in center of Rd. and include property of James Taylor then 82' to include property of William Threadgill. Third Avenue intersects with Carole Ave. in an Easterly direction and continues 185' to include property of Wilson Johnson

continuing center of Carole Ave. (1587) past Reid Rd. (1557) 248' to a nail in center of Rd. to include property of Dennis Hawkins continuing on to include property of Doug McLain continuing on to include property of Leroy Shillmore also marked by nail in center of Rd. continuing center of Carole Ave. 412' to include property of Ray Stegall next nail will mark and include property of David Swanner, then 90 degrees E. to back of property belonging to Nathlee Strickland continuing 92' to wooden stake to include property of Elizabeth Harris, then 92' to metal post to include property of Mae Conder, continuing E. to metal stake to include David Howell's property, then 100' to metal stake to include Jeff and Wanda McSheehan's property next metal stake will mark and include property of Carl Cassados continuing E. to include property of Michele Klass 200' to next stake to include property of Daniel and Gloria Smith 100' to metal stake to include property of Alfred Helms at their metal stakes 120 degrees SW and 884' to metal fence post then 80 degrees E. and 445' to metal pipe then 40 degrees S. and 142' to metal pipe to include property of Bruce and Linda Simpson continuing SE 1,167' to include property of Norma Simpson continuing E. 536' to metal rod to include property of Charles and Janice Byrum, at metal rod 90 degrees NE and 712' to include property of Scott and Wendy McGuirt then 30 degrees E and 165' to metal pipe then 90 degrees S and 594' to include property of Joe and Kathryn Byrum continuing on and crossing Faith Church Rd. (1518) to connect with metal stake at corner of Dennis and Kathy Helms' property then 80 degrees NE and 701' to metal rod to include property of Helen Snyder continuing NE 247' to the center of Secrest Short Cut Rd. (1501) then 90 degrees N and 245' to center of Faith Church Rd. (1518) then 90 degrees E in center of Rd. to include property of Charles and Janice Byrum from nail in center of Faith Church Rd. 659' to include property of Ervin Barr then 660' to include property of Harold Pressley then 178' to include property of Frank Owens continuing 299' down Faith Church Rd. to include property of Dale Pressley then 344' to include Carl Helms' property at this spike in Rd. Rd bends N. and 165' to include property of Philip Simpson, then continues on 580' to include Ralph Boullet property, then 165' to include Sandra Long's property then 1,359' to include Stan and Patricia Pressley's property. Road bends West and continues 102' to include Lawrence Martin property then 82' to include Donald Brize property, continuing NW on Faith Church Rd. to include Marlen Moore's property then 90 degrees N and 300' to include Dennis Price's property continue 206' to include Floyd Price property then 136' to include Paul McLain property, then 150' to include Paul and Linda Voglewed property, then 140' to Robert and Joan Thompson's property then 536' to center of Indian Trail Fairview Rd. and which includes Charles Burgess property, then 90 degrees W in center of Indian Trail Fairview Rd. and 194' to nail in center of Rd. then 200' to include property of Thomas and Martha Dushak, then from nail 300' to include property of James and Myrtle Benton continuing W. 167' to nail in center of Rd. 90 degrees N. and 233' to include property of Charles Funderburk at 233' marker connects with and includes property of Lawrence Funderburk continuing 1,016 to center of Crooked Creek and connecting to property of Steve Dunn and East up center of Creek 123' to include property of Betty Knece then E. in center of Creek

1,064' to include property of Edwin Dury then 825' E. in center of Creek then out of Creek bank and 973' to flint rock to include property of William Humble then 300' to metal stake to include Delano Trull property then E. 102' to Stanley Edwards' property and at metal pipe continuing NE 300' and connecting to Typar property, then 1,564' to iron rod at Maurice Rowell's property and 650' E to include property of Sam Edwards then at metal pipe 436' to include Tommy Edwards' property, then 299' to include Jamie Haney's property at this point 20 degrees SE and 185' to metal pipe and 1,155' E to include property of Ted Edwards and at metal rod NE 75 degrees and 2,640' to include Tract No. 7015002 of Linda Blackmore's property, which is center of Goose Creek using center of Creek as boundary and N. 577' to include property of Danny Myers, Creek travels 306' N. then turns and 165' E. then 204' NE then 112' to center of Mill Grove Rd. (1525). Boundary turns E. on Mill Grove Rd. and connects with property of Kenneth Dorton continuing E. on Mill Grove Rd. to include property of William Lemond then 165' E. to include property of Bertie Lemond then 330' to center of Lawyers Rd. (1004) then 400' to include property of William Lemond again then from nail in center of Rd. 668' to include property of Danny Myers Tract No. 2, then 82' to include property of Debrah Dorton then N. 165' to include property of Kenneth Dorton then 160' N. to include property of Dennis Dorton then 120 degrees W. and 295' to large metal rod then NW 367' to metal rod then W. 165' then S. 255' to metal axle at back of Danny Myers' property than at metal axle 195' to metal rod at back of William Lemond's property then 247' to center of Goose Creek enclosing third Tract of Kenneth Dorton's property, continuing S. 739' down Goose Creek to center of Mill Grove Rd., then using center of Mill Grove Rd. (1525) as boundary continuing W. 1,980' down front of Linda Blackmore property to nail in center of Rd., including property of Luther Wetherington property, then 165' to include Greg and Kim Mullis' property, then 990' to include property of King Heirs, then 330' to include property of Steve Turner, then 123' to include James Crump's property, then 295' to include Larry King's property, then 315' to include Helen Gibson's property then 136' to include Jerry Cooper's land still using center of Mill Grove as boundary 110' then 82' to include property of Kenneth and Wanda Rayley, then 82' to include property of Sue Gordon then 82' to include Clayton Barnes' property then 82' to include James Harris' property, then 82' to include property of Leon and Shelby Dial, then 82' to include property of Robert Bemis, then 82' to include property of Edward Kanis, then 82' to include property of Gary and Sandra Antigo, then 82' to include property of James Dickerson, then 82' to include Garland Thomas property, then 82' to include James Baker property, then 82' to include property of Murry Family Partnership, then 82' to include property of Albert Mattock, then 82' to include property of Hal Oswalt, then 82' to include property of William Reinke, then 82' to include property of Lyndel McIver. Then crossing Beacons Hills Rd. to iron pipe at back corner of Randall Johnson property also included, then continuing on S. 102' to include property of Edward Hartis, then 102' to include Leonard Benfield, then 102' to include property of Ray and Mary O'Shields, then 102' to include property of Herbert Himes, then 102' to include property of Irene Leake, then 102' to include

property of Enoch Glory, then 102' to include James Helrigle property, then 102' to include property of D.P. and Arlene Somotherman, continuing on 102' to include property of Sharon Hendrickson, then 102' to include property of Danny Myers, then continuing on 30' to center of Hemby Wood Dr. then 90 degrees S. to center of Mill Grove Rd. (1525) then 90 degrees E. and 742' to center of Idlewild Rd. (1582) then 90 degrees N. on Idlewild Rd. and 1,320 to nail in center of Rd. then 90 degrees E. and 225' to wooden stake at back corner of Darren Linsey property to include his property and continue on NW 90' to include property of Steven Revette, then 80' to include property of Virginia Matthews, then 80' to include property of Wayne and Cindy Gordon, then 80' to include property of Donald Moyers, then 80' to include property of Mary Jones, then 80' to include property of Mark Rowell, then 80' to include property of Loreta Fowler, 80' to include David and Rita Hinson property, 80' to include property of Ernestene Aliff, 80' to include Ken Bailey property, at corner of Kent Bailey property 90 degrees W. and 20' to corner of Linda Compton's property also included then 90 degrees N. and continuing on to cross Bridle Trail Rd. and connecting to and including property of Aron McPhatter, then 80' to include Richard Hodge's property, then 80' to include property of Roger McCover, then 80' to include property of Danny and Sandra Hyatt, then 80' to include property of Glenn Lowery, then 80' to include property of Marvin Naylor, then 80' to include property of Elizabeth Price, then 80' to include property of Ray Gormon, then 80' to include property of Betty Johnson, then 80' to include property of Wanda Rogers, then 80' to include property of Clayton Liles, then 90 degrees W. and 80' to corner of Mark McCall property, then 90 degrees N. and crossing Rockwell Dr. to include property of Emma Metheney, then 80' to include property of Jimmy and Wendy Brown, then NW 165' to center of Idlewild Rd., then 90 degrees down center of Idelwild Rd. (1582) to nail in center of Rd, then 90 degrees E. and connect with and include property of J.R. and Kim Price, then continuing on E. 335' to connect and include property of Philip and Carol Pressley, then 737' to connect and include property of Mr. Swindler at large metal rod NW 1112 to connect and include property of Gene and Lois Belk, continuing on 665' down Belk property line to connect with, but not include, Woodrow-Crump Estate, then 90 degrees NW and 825' to connect and include property of Douglas Dixon, then 210' N. to connect and include property of J.C. McClain, then 165' to connect and include property of James and Frances Crump. Then 409' N. to center of Stevens Mill Rd. (1524) to include Emmanuel Baptist Church, then 90 degrees W. down center of Stevens Mill Rd. crossing Idlewild Rd. (1582) 247' to include property of J. Springstead, continuing on NW on Stevens Mill Rd. 270' to include property of David and Fran McClain, then 440' to include property of J.C. McClain, then 335' to include property of Carol Brands, then 879' to center of South Fork of Crooked Creek and Stevens Mill Rd. which is back of property of Larry Love.

"CHAPTER III.
"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Hemby Bridge is the Board of Aldermen, which has five members.

"Sec. 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 1999 provided for by Section 4.1 of this Charter, Bill Baucom, J.C. McClain, and Phil Pressley are appointed members of the Board of Aldermen, and they shall possess and may exercise the powers granted to the Board of Aldermen until their successors are elected or appointed and qualify pursuant to this Charter. The Board of Aldermen shall have three members until the organizational meeting after the 1999 municipal election.

"Sec. 3.3. **Manner of Electing Board of Aldermen; Term of Office.** The qualified voters of the entire Town shall elect the members of the Board of Aldermen. In 1999, five members of the Board of Aldermen are elected. The three persons receiving the highest numbers of votes are elected to four-year terms, and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two persons are elected to four-year terms. In 2003 and quadrennially thereafter, three persons are elected to four-year terms.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** At its organizational meeting after each election, the Board of Aldermen shall elect one of its members as Mayor to serve at the pleasure of the Board of Aldermen.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan election and runoff basis and results determined as provided in G.S. 163-293.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Hemby Bridge operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. This act does not affect the boundaries or taxing power of any fire tax district. Notwithstanding G.S. 69-25.15 or any other provision of law, any area which may be annexed by the Town of Hemby Bridge shall remain in the fire tax district.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Hemby Bridge shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in

accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1552

Short Title: Changes to the Notary Public Act. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING A NOTARY PUBLIC'S STAMP OR SEAL, TO ALLOW EMPLOYEES OF THE NOTARY DIVISION TO ACT AS NOTARIES EX OFFICIO, AND TO IMPOSE A FEE TO BE CERTIFIED AS AN INSTRUCTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary of State shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary of State and consists of not less than three hours nor

more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary of State that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary of State and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The Secretary of State may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a felony or of a crime involving dishonesty or moral turpitude.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

Registers of deeds, assistant and deputy registers of deeds, clerks of court, ~~and~~ assistant and deputy clerks of ~~court~~ court, and the Director and employees of the Notary Division of the Department of the Secretary of State are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.

(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of ~~State.~~ State and by paying a nonrefundable fee of fifty dollars ($50.00)."

Section 3. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed or printed name near the signature, but not contained within the notary's stamp or seal.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 4. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal may contain the expiration date of the notary's commission so long as the expiration date is a part of the stamped or embossed seal and is not handwritten or typed onto the seal. The official stamp or seal, as it appears on any documents shall not be altered by any typed, printed, drawn, or handwritten material. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the Secretary of State."

Section 5. G.S. 10A-15 reads as rewritten:

"**§ 10A-15. ~~Registers of deeds are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) Registers of deeds and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as register of deeds and may certify their notarial acts under the seals of their respective offices.

(b) The Director of the Notary Division of the Department of the Secretary of State, and the employees of that Division, may act as notaries public by virtue of their employment by the Secretary of State and may certify their notarial acts under the seal of the Secretary of State. The Director may charge a fee for a notarial act performed by the Notary Division in accordance with G.S. 10A-10."

Section 6. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ October 1, 1998."

Section 7. This act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1552

SHORT TITLE: Changes to the Notary Public Act

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$2,900	$3,050	$3,200	$3,350	$3,500
EXPENDITURES					
POSITIONS: NA					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY:

Amends G.S. 10A-2 to specify that one of the chapter's purposes is to prevent fraud and forgery. Amends G.S. 10A-4 to require payment of a $50 fee to be certified to teach a course of study for notaries public, and to renew certification. Adds director and employees of the Notary Division of the Department of the Secretary of State to existing exemption from certain instructor certification requirements. Amends G.S. 10A-15 to permit director and employees of the Notary Division to act as notaries public by virtue of their employment by the Secretary of State, and to allow them to certify their notarial acts under the Secretary of State's seal. Amends G.S. 10A-4 (c) to specify that the Secretary of State may deny an application for commission or recommission as a notary if applicant has been convicted of a felony. Amends G.S. 10A-11 to add to and clarify specifications for notary seals. Amends G.S. 10A-16 to validate various notarial acts performed before October 1, 1998, and to clarify and add to the acts that are covered by the validation.

ASSUMPTIONS AND METHODOLOGY:
The number of initial certifications to teach a course of study for notaries public and the certification renewals to teach the courses are represented below by the single figures for the 1993-94 through the 1997-98 (projected) fiscal years:

1993-94	1994-95	1995-96	1996-97	1997-98 (est.)
43	47	50	52	55

Senate Bill 1552 authorizes the Secretary of State to charge a $50 fee for each initial certification and renewal to teach a course of study for notaries public. Relying on the experience from 1993-94 to 1996-97, we estimate an average annual increase of 3 individuals to the total number of individuals receiving initial certification and/or certification renewal. The following numbers (by fiscal year) represent the projected number of certifications and renewals in the out years:

1998-99	1999-00	2000-01	2001-02	2002-03
58	61	64	67	70

We simply multiply the projected numbers of initial certificates and renewals (above) times the $50 fee (authorized by the bill) to get the revenue projections by fiscal year reflected in the **FISCAL IMPACT** section of this note.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY: Tom Covington

DATE: June 16, 1998

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/1/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B. H. Pruitt	Sec. of State
Shirley Pope	Sec. of State
Paul Stock	NC Bankers
Lennie Collins	Dept of Revenue
Bernard Allen	SOS
John Phelps	NC League of Municipalities
Bill Scoggin	NC BAR ASSOC.
Dennis Arnold	SEANC
Jim Blackburn	NC Association of County Commissioners
Mark Gleason	Capital Group
Susan Markham	EGHS

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Wednesday, July 01, 1998

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

FAVORABLE

H.B. **1274** Gastonia Special Assessments
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1278** Wayne School Acquisition
Sequential Referral: None
Recommended Referral: None

H.B. **1475** Ocean Isle Beach Annexation
Sequential Referral: None
Recommended Referral: None

H.B. **1556** Dunn Extraterritorial Jurisdiction
Sequential Referral: None
Recommended Referral: None

H.B. **1594** Franchise Distribution Repayment
Sequential Referral: None
Recommended Referral: None

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

S.B. **1514** Hemby Bridge Incorporated
Draft Number: PCSA873
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: None

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Wednesday, July 01, 1998

SENATOR KERR,
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)**1284** Alexander School Acquisition

Draft Number:	PCS3153
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Please disregard the 1st report on this Bill

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JULY 7, 1998

12 NOON - ROOM 544

H.B 1504 - Pembroke Annexation. - Rep. Sutton

H.B. 1528 - Modify Long Beach Room Tax. - Rep. Redwine

H.B. 1637 - Cape Carteret Annexation Repeal. - Rep. Smith

H.B. 1638 - Morehead City Satellite Annexations. - Rep. Smith

S.B 1239 - Expand Qualified Business Tax Credit. - Sen. Hoyle

S.B. 1242 - Wireless Telephone Service/Tower Act. - Sen. Hoyle

S.B. 1433 - Exempt Voluntary Severance Pay. - Sen. Hoyle

SENATE FINANCE COMMITTEE

TUESDAY, JULY 7, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, July 7, 1998, at 12 Noon in Room 544 with Senator John Kerr presiding. There were 22 Committee members present.

H.B. 1637 - Cape Carteret Annexation Repeal.

Representative Smith was recognized to explain his bill and after his explanation, Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill heard in Committee included in the Minutes.

H.B. 1638 - Morehead City Satellite Annexation.

After Representative Smith explained his bill, Senator Purcell moved for a Favorable Report and the motion carried. Copy of Bill heard in Committee included in the Minutes.

H.B. 1504 - Pembroke Annexation.

Representative Sutton explained his bill and Senator Purcell moved for a Favorable Report. Motion carried. Copy of Bill heard in Committee included in the Minutes.

H.B. 1528 - Modify Long Beach Room Tax.

Representative Redwine explained his Bill and Senator Lee moved for a Favorable Report. Senator Lee moved that his motion for a Favorable Report be re-considered and this motion passed. Senator Ballantine moved for the adoption of a Committee Substitute for this Bill and the motion passed. Senator Ballantine then explained the Committee Sub. Representative Redwine had no opposition to this Committee Sub and on motion by Senator Ballantine, the Committee Sub was given a Favorable Report by the Committee. Copy of Committee Sub included in the Minutes. (The Committee Chairs directed that this Bill will be held and reported in later in the Session.)

S.B. 1242 - Wireless Telephone Service/Tower Act.

Senator Hoyle was recognized to explain his Bill and made a motion to adopt a Committee Substitute. His motion carried. At the conclusion of Senator Hoyle's explanation, there were several questions by the Committee members and an in-depth discussion followed. There was no vote taken on S.B. 1242. Copy of Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 1239 and SB 1433 not heard in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1637
Committee Substitute Favorable 6/4/98

Short Title: Cape Carteret Annexation Repeal. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO SETTLE ANNEXATION LITIGATION BY REPEALING AN ANNEXATION ORDINANCE OF THE TOWN OF CAPE CARTERET.

The General Assembly of North Carolina enacts:

Section 1. Annexation Ordinance 96-07-03, adopted by the Board of Commissioners of the Town of Cape Carteret on July 29, 1996, is repealed as to territory north of Pettiford Bay. It is validated as to the remaining areas covered by the ordinance. The area removed from the annexation by this act shall be subject to the planning jurisdiction of the Town of Cape Carteret.

Section 2. This act becomes effective July 29, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1638
Committee Substitute Favorable 6/4/98

Short Title: Morehead City Satellite Annexations. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXPAND FROM TEN PERCENT TO TWENTY-FIVE PERCENT OF THE PRIMARY CORPORATE LIMITS OF THE TOWN OF MOREHEAD CITY THAT MAY BE IN SATELLITE ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty-five percent (25%) of the area within the primary corporate limits of the annexing city."

Section 2. This act applies to the Town of Morehead City only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1504
Committee Substitute Favorable 6/17/98

Short Title: Pembroke Annexation. (Local)

Sponsors:

Referred to:

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF PEMBROKE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Pembroke:

TRACT A

In Pembroke Township, Robeson County, North Carolina South of the Town of Pembroke Corporate Limits and adjoining, on the Southeast side of and adjoining the North South CSX railroad, on all sides of the Secondary Road Number 1339 and Secondary Road Number 1555 intersection bounded on the Southeast by Albert Hunt and W. M. Revels and on the South by the Lumber River and being more particularly described as follows:

Beginning at a point on the Northwest Secondary Road Number 1555 right-of-way (30 feet from center) where the original Town of Pembroke South Corporate Limits intersects said right-of-way; runs thence as its South line South 85 degrees 17 minutes East 1411.32 feet to an iron stake in a canal on the Southeast line of the Public Schools of Robeson County (20-E at Page 235); thence with the canal South 46 degrees 01 minutes West 1053 feet to an iron stake at its intersection with another canal on Albert Hunt's Northeast line; thence as said canal North 43 degrees 32 minutes 36 seconds West 216 feet to his North corner at a bend in said canal; thence as his Northwest line with the canal South 40 degrees 27 minutes 24 seconds West 2574 feet to an iron stake in the center of Secondary Road Number 1339; thence as

the canal South 40 degrees 27 minutes 24 seconds West 1240.05 feet with and beyond the canal to a point in the Lumber River; thence up the River the following: North 78 degrees 13 minutes 40 seconds West 107.51 feet; North 56 degrees 48 minutes 58 seconds West 100.51 feet; North 23 degrees 52 minutes 01 seconds West 64.03 feet; North 59 degrees 02 minutes 18 seconds East 111.80 feet; North 39 degrees 53 minutes 50 seconds East 103.80 feet; North 28 degrees 36 minutes West 234.50 feet; and South 69 degrees 23 minutes 50 seconds West 430.10 feet to an iron stake in the River on the Southeast CSX railroad right-of-way (50 feet from center); thence as said right-of-way North 33 degrees 51 minutes 30 seconds East 1481.40 feet to an iron stake in the center of Secondary Road 1339; thence as said right-of-way North 30 degrees 18 minutes 40 seconds East 1968.04 feet to an iron stake on said right-of-way as its intersection with the Southwest line of the Town of Pembroke Area "C" Annex (M.B. 31 @ 12); thence as said line South 58 degrees 40 minutes East 389.43 feet to an iron stake on the Northwest Secondary Road Number 1555 right-of-way (30 feet from center); thence as said right-of-way North 35 degrees 58 minutes 30 seconds East 666.16 feet to the beginning containing 90.37 acres.

TRACT B

In Pembroke Township, Robeson County, NC on the East side of and adjoining the original East Town of Pembroke Corporate limits bounded on the North by Secondary Road Number 1565 and the South by Secondary Road Number 1564 and the East to West CSX Railroad right-of-way and being more particularly described as follows:

Beginning at a point on the Southwest Secondary Road Number 1565 right-of-way (30 feet from center) where said right-of-way intersects the original Town of Pembroke East Corporate limits; runs thence as said right-of-way South 36 degrees 23 minutes East 26.05 feet; South 41 degrees 04 minutes 25 seconds East 93.80 feet; South 41 degrees 37 minutes 35 seconds East 234.56 feet; South 40 degrees 25 minutes East 1000 feet; South 31 degrees 33 minutes East 500 feet; South 23 degrees 04 minutes East 200 feet; South 17 degrees 49 minutes 33 seconds East 551.56 feet and South 6 degrees 53 minutes 33 seconds 1105.80 feet to its intersection with the North Secondary Road Number 1564 right-of-way and the North CSX Railroad right-of-way (100 feet from center); thence as the North right-of-way North 63 degrees 42 minutes West 1944 feet to an iron stake on said right-of-way at its intersection with the original Town of Pembroke East Corporate limits; thence as said line North 5 degrees 14 minutes 15 seconds East 2410.09 feet to the beginning containing 70.96 Acres.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1528
Committee Substitute Favorable 6/17/98
Proposed Senate Committee Substitute H1528-PCSXA494-RB2

Short Title: Long Beach Room Tax/North Topsail Beach. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION AND TO AUTHORIZE THE TOWN OF NORTH TOPSAIL BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional

room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 3. North Topsail Beach occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of North Topsail Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. North Topsail Beach shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the North Topsail Beach Tourism Development Authority. Of the net proceeds of the tax levied under this section for the first 24 months the tax is in effect, the Authority must use at least twenty-five percent (25%) to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of

tourist-related amenities, and to address health, safety, and welfare issues related to tourism. Of the net proceeds of the tax levied after the first 24 months that the tax is in effect, the Authority must use at least two-thirds of the net proceeds of a tax levied under this section to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of tourist-related amenities, and to address health, safety, and welfare issues related to tourism.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 4. North Topsail Beach Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of North Topsail Beach adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a North Topsail Beach Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Authority shall be composed of five members, three of whom must be currently active in the promotion of travel and tourism in the town and two of whom must be residents of the town. The board of aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of North Topsail Beach shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 5. Town Administrative Provisions. -- Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, and Shelby, to the Town of North Topsail Beach, and to the municipalities in Brunswick County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98

Short Title: Wireless Telephone Service/Tower Act. (Public)

Sponsors:

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE COLOCATION OF SERVICES TO THOSE TOWERS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 62B.

"Wireless Telephone Service.

"**§ 62B-1. Definitions.**

As used in this Chapter:

(1) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

(2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

(3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

(4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.

(5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

(6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless Advisory Board.

(7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.

(8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.

(9) 'Mobile set telephone number' means the number assigned to a CMRS connection.

(10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.

(11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

(12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.

(14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.

(15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

(16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"**§ 62B-2. Wireless 911 Advisory Board.**

(a) There is created a Wireless 911 Advisory Board ('Board'), consisting of nine members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Three members appointed by the Speaker of the House of Representatives, two representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Three appointed by the President Pro Tempore of the Senate, one representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of five members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) The Board shall establish and maintain the Wireless Fund as an insured, interest-bearing account into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set

forth in this Chapter. The Board may invest the revenue in the Wireless Fund in the same manner that State funds may be invested. The Board shall deposit any income earned from such an investment in the Wireless Fund.

(d) The Board may disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning July 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board every two years, beginning July 1, 2000. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents ($1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a collection action may be initiated by the Board and reasonable costs and attorneys' fees associated with that collection action may be awarded.

(c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

(d) Each CMRS provider shall be entitled to deduct a one percent (1%) administrative fee from the total service charges collected.

(e) All service charges collected by the CMRS providers, less the administrative fee described in subsection (d) of this section, are to be remitted to the Board to be placed in the Wireless Fund, not later than 30 days after the end of the calendar month in which such service charges are collected.

"§ 62B-5. Use of funds.

(a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be held in escrow and used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service.

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). The 40% Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. The population data to be used will be those numbers on file with the Secretary of State. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved

invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

"§ 62B-6. Distributions of funds.

(a) The Board shall, upon majority vote, retain an independent, third-party accounting firm for the purposes of processing checks and distributing funds as directed by the Board, in accordance with the provision of this Chapter.

(b) The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to adjust the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its ten thousand number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Notwithstanding any other provision of law, no proprietary information submitted pursuant to this Chapter shall be subject to the North Carolina Public Records Law or subpoena, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

Notwithstanding any other provision of law, no CMRS provider, local exchange company, service supplier, PSAP, the Board or their employees, directors, officers, or agents, except in cases of wanton and willful misconduct, shall be liable for any

damages in a civil action or subject to criminal prosecution resulting from death or injury to the person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system.

"**§ 62B-12. Misuse of wireless 911 system; penalty.**

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars ($100.00), the person is guilty of a Class 1 misdemeanor."

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

"(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The Wireless 911 Advisory Board."

Section 3. G.S. 136-18 is amended by adding a new subdivision to read:

"(35) The Department of Transportation may lease land, or any interest thereof, for the purposes of construction and placement of communications towers on State land controlled by the Department of Transportation or for placement of antennas upon State-owned structures controlled by the Department of Transportation. The following requirements shall apply to such leases:

a. The lease shall require the lessee to permit other telecommunications carriers to colocate on the communications tower on commercially reasonable terms between the lessee and the colocating carrier until the communications tower reaches its capacity. Unless the Department of Transportation determines that colocation is unfeasible at that location, the communications tower shall be designed and constructed to accommodate at least one other carrier on the tower.

b. The Department of Transportation shall, in determining the location of lands to be leased for communications towers,

encourage communications towers to be located near other communications towers to the extent technically desirable.

c. The Department of Transportation shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this subdivision, 'colocate and colocation' mean the sharing of a communications tower for two or more services.

City and county zoning ordinances apply to leases and rentals created under this subdivision.

Leases created under this subdivision do not require approval under G.S. 146-29."

Section 4. G.S. 146-29 reads as rewritten:

"**§ 146-29. Procedure for sale, lease, or rental.**

(a) If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G.S. 146-74 through 146-78.

(b) The State may lease land, or any interest thereof, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to colocate on the communications tower on commercially reasonable terms between the lessee and the colocating carrier until the communications tower reaches its capacity. Unless the State determines that colocation is unfeasible at that location, the communications tower shall be designed and constructed to accommodate at least one other carrier on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this subsection, 'colocate and colocation' mean the sharing of a communications tower by two or more services.

City and county zoning ordinances apply to leases and rentals created under this subsection."

Section 5. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. Sections 1 and 2 of this act become effective 90 days after it becomes law. Appointments to the Wireless 911 Advisory Board created in G.S. 62B-2 shall be made within 30 days of the effective date of Sections 1 and 2 of this act. The remainder of this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1242*
Proposed Committee Substitute S1242-CSRL-011

Short Title: Wireless Telephone Service/Tower Act. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 62B.

"Wireless Telephone Service.

"**§ 62B-1. Definitions.**

As used in this Chapter:

(1) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

(2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

(3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

(4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.

(5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

(6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.

(7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.

(8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.

(9) 'Mobile set telephone number' means the number assigned to a CMRS connection.

(10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152,

and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.

(11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

(12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.

(14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.

(15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

(16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"**§ 62B-2. Wireless 911 Board.**

(a) There is created a Wireless 911 Board ('Board'), consisting of eleven members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, two representing CMRS providers licensed to do

business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, one representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of six members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter.

(d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"**§ 62B-3. Amount of service charge.**

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time,

of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents ($1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"**§ 62B-4. Management of funds.**

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a collection action may be initiated by the Board and reasonable costs and attorneys' fees associated with that collection action may be awarded.

(c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

(d) Each CMRS provider shall be entitled to deduct a one percent (1%) administrative fee from the total service charges collected.

(e) All service charges collected by the CMRS providers, less the administrative fee described in subsection (d) of this section, are to be remitted to the Board to be placed in the Wireless Fund, not later than 30 days after the end of the calendar month in which such service charges are collected.

"**§ 62B-5. Use of funds.**

(a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order

and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the 40% Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The 40% Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Planning. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC

Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system.

(f) On February 15, 2000, and every two years thereafter the Board shall report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The report shall contain complete information regarding receipts and expenditures of all funds received by the Board during the period covered by the report as well as the status of wireless Enhanced 911 systems in North Carolina at the time of the report. The first report shall cover the period from the formation of the Board to December 31, 1999. Each succeeding report shall cover the two year period of time from the ending date of the previous report.

"§ 62B-6. Administrative fee.

The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local

exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its ten thousand number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. CMRS connection information obtained by PSAP personnel for public safety purposes is not public information under Chapter 132 of the General Statutes. No person shall disclose or use, for any purpose other than for the wireless 911 calling system, information contained in the data base of the telephone network portion of a wireless 911 calling system established pursuant to this Chapter.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Proprietary information submitted pursuant to this Chapter shall not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

A CMRS provider, local exchange company, service supplier, or their employees, directors, officers, or agents, except in cases of wanton and willful misconduct, shall not be liable for any damages in a civil action resulting from death or injury to any

person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle.

"**§ 62B-12. Misuse of wireless 911 system; penalty.**

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service or information for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars ($100.00), the person is guilty of a Class 1 misdemeanor."

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

"(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The Wireless 911 Board."

Section 2.1. G.S. 62A-10 reads as rewritten:

"**§ 62A-10. Limitation of liability.**

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"**§ 146-29.2. Lease provisions for communications towers.**

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county zoning ordinances apply to leases and rentals created under this section."

Section 4. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

North Carolina General Assembly
Legislative Services Office

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

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

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

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

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 7, 1998

MEMORANDUM

TO: **Senate Committee on Finance**

FROM: **Steven Rose, Principal Attorney**

RE: **Proposed Committee Substitute for Senate Bill 1242; Wireless 911 Telephone Service and Tower Act**

The proposed committee substitute for Senate Bill 1242 establishes a system for charging cellular telephone users for enhanced 911 service and establishes a method of administering and distributing the funds collected. It also provides authority to the State to lease space on State land and buildings for the purpose of locating wireless telecommunications facilities.

Section 1 of the bill adds Chapter 62B to the General Statutes. G.S. 62B-2 creates an eleven member Wireless 911 Advisory Board which will determine the service charge to be levied on cellular telephone users for wireless enhanced 911 service, aggregate the charges collected, and distribute them for purposes of paying for these systems. The Board consists of two members appointed by the Governor, one upon the recommendation of the League of Municipalities, and one upon the recommendation of the Association of County Commissioners; four members appointed by the Speaker, a sheriff, two representing CMRS (Commercial Mobile Radio Service) providers and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials; four appointed by the President Pro Tempore, a chief of police, one representing CMRS providers, one representing local exchange carriers, and one representing the North Carolina Chapter of the National Emergency Number Association. The Chair of the Board is the Secretary of Commerce, or the Secretary's designee. Terms are four years and limited to two successive terms.

Under G.S. 62B-3, the initial rate authorized is 80 cents per month. This may be adjusted every two years but may not exceed $1.25 per month.

Under G.S. 62B-4, the CMRS providers collect the monthly fee from their customers and may deduct one percent for administrative expenses.

Use of the funds is restricted under G.S. 62B-5. Sixty percent may be used to reimburse cellular service providers for complying with wireless 911 requirements established by FCC order, including design, upgrade, purchasing, leasing, programming, installing, testing and maintaining of hardware and software components and data necessary to operate the system. Forty percent is distributed to the public safety answering points (the agencies that receive incoming 911 calls and make the dispatches). The use of these funds is restricted to direct costs of establishing and maintaining a wireless enhanced 911 system. The Board may retain one percent of funds collected for administrative expenses.

G.S. 62B-5(e) requires each PSAP to report wireless 911 related income and expenses annually to the Board. G.S. 62B-5(f) requires the Board to make biennial reports to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee.

G.S. 62B-8 gives the State Auditor authority to perform audits to ensure that funds are being managed in accordance with the provisions of the act. An audit must be performed at least every two years.

G.S. 62B-9 and 62B-10 protect customer records and proprietary information from public disclosure.

G.S. B-11 limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

Under G.S. 62B-12, misuse of a wireless 911 system or information will be a Class 3 misdemeanor, unless the value of the charge or service obtained exceeds $100, in which case it is a Class 1 misdemeanor.

The Wireless 911 Advisory Board is not subject to the Administrative Procedures Act.

Section 2.1 amends G.S. 62A-10, which limits liability in connection with the supplying of services for a hard-wired 911 system. It adds a provision clarifying that G.S. 62A-10 does not apply to motor vehicle liability.

Section 3 of the bill amends Chapter 146 by adding a new section authorizing the State to enter into leases for location of telecommunications towers on State real property and for placement of antennas upon state structures. Lessees must permit other carriers to co-locate on communications towers under contracts between the leasee and the co-locating carrier and, unless the State determines co-location to be infeasible, towers must be constructed to accommodate other carriers. The State is to encourage towers to be located near each other and must choose locations which minimize the visual impact on surrounding landscape. City and county zoning ordinances will apply to such leases.

The act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 7, 1998

MEMORANDUM

TO: **Senate Committee on Finance**

FROM: **Steven Rose, Principal Attorney**

RE: **Proposed Committee Substitute for Senate Bill 1242; Wireless 911 Telephone Service and Tower Act**

The proposed committee substitute for Senate Bill 1242 establishes a system for charging cellular telephone users for enhanced 911 service and establishes a method of administering and distributing the funds collected. It also provides authority to the State to lease space on State land and buildings for the purpose of locating wireless telecommunications facilities.

Section 1 of the bill adds Chapter 62B to the General Statutes. G.S. 62B-2 creates an eleven-member Wireless 911 Advisory Board which will determine the service charge to be levied on cellular telephone users for wireless enhanced 911 service, aggregate the charges collected, and distribute them for purposes of paying for these systems. The Board consists of two members appointed by the Governor, one upon the recommendation of the League of Municipalities, and one upon the recommendation of the Association of County Commissioners; four members appointed by the Speaker, a sheriff, two representing CMRS (Commercial Mobile Radio Service) providers and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials; four appointed by the President Pro Tempore, a chief of police, one representing CMRS providers, one representing local exchange carriers, and one representing the North Carolina Chapter of the National Emergency Number Association. The Chair of the Board is the Secretary of Commerce, or the Secretary's designee. Terms are four years and limited to two successive terms.

Under G.S. 62B-3, the initial rate authorized is 80 cents per month. This may be adjusted every two years but may not exceed $1.25 per month.

Under G.S. 62B-4, the CMRS providers collect the monthly fee from their customers and may deduct one percent for administrative expenses.

Use of the funds is restricted under G.S. 62B-5. Sixty percent may be used to reimburse cellular service providers for complying with wireless 911 requirements established by FCC order, including design, upgrade, purchasing, leasing, programming, installing, testing and maintaining of hardware and software components and data necessary to operate the system. Forty percent is distributed to the public safety answering points (the agencies that receive incoming 911 calls and make the dispatches). The use of these funds is restricted to direct costs of establishing and maintaining a wireless enhanced 911 system. The Board may retain one percent of funds collected for administrative expenses.

G.S. 62B-5(e) requires each PSAP to report wireless 911 related income and expenses annually to the Board. G.S. 62B-5(f) requires the Board to make biennial reports to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee.

G.S. 62B-8 gives the State Auditor authority to perform audits to ensure that funds are being managed in accordance with the provisions of the act. An audit must be performed at least every two years.

G.S. 62B-9 and 62B-10 protect customer records and proprietary information from public disclosure.

G.S. B-11 limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

Under G.S. 62B-12, misuse of a wireless 911 system or information will be a Class 3 misdemeanor, unless the value of the charge or service obtained exceeds $100, in which case it is a Class 1 misdemeanor.

The Wireless 911 Advisory Board is not subject to the Administrative Procedures Act.

Section 2.1 amends G.S. 62A-10, which limits liability in connection with the supplying of services for a hard-wired 911 system. It adds a provision clarifying that G.S. 62A-10 does not apply to motor vehicle liability.

Section 3 of the bill amends Chapter 146 by adding a new section authorizing the State to enter into leases for location of telecommunications towers on State real property and for placement of antennas upon state structures. Lessees must permit other carriers to co-locate on communications towers under contracts between the leasee and the co-locating carrier and, unless the State determines co-location to be infeasible, towers must be constructed to accommodate other carriers. The State is to encourage towers to be located near each other and must choose locations which minimize the visual impact on surrounding landscape. City and county zoning ordinances will apply to such leases.

The act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: July 6, 1998

TO: Senate Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: S.B. 1242 - Wireless Telephone Service/Tower Act

FISCAL IMPACT

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

	Millions				
	FY 1998-99	**FY 1999-00**	**FY 2000-01**	**FY 2001-02**	**FY 2002-03**
REVENUES					
Wireless Fund	**14.96**	**16.46**	**19.75**	**23.70**	**28.44**
EXPENDITURES					
Administration	**0.15**	**0.16**	**0.20**	**0.24**	**0.28**

Other Expenditure Estimates Not Possible at this Time

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wireless 911 Board, Department of Administration.

EFFECTIVE DATE: Sections 1 and 2 become effective 90 days after it becomes law. Appointments to the Wireless board shall be made within 30 days of the effective dates of sections 1 and 2. The remainder becomes effective when it becomes law.

BILL SUMMARY: The bill creates a Wireless 911 Board, establishes the Wireless Fund, and directs the board to oversee the fund's operation. An $0.80 per month per subscriber charge on wireless customers statewide will generate revenue for the fund. Under the bill the carrier (Bell South Mobility, GTE, 360 Communications, etc.) collects the subscriber charge, and retains 1% of the total revenue to cover the costs of administration. The Wireless 911 board will also retain 1% for its expenses. The remaining revenue raised is distributed 60% to wireless carriers and 40% to the organizations that answer 911 calls. Of the 40% distributed to 911 organizations, 50% is divided equally among the total number of 911 organizations, and 50% is distributed

according to population. The board can revise the fee every two years to a maximum rate of $1.25 per month per customer. The board is required to report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The bill also releases state agencies to lease public property for the construction of wireless communication towers.

BACKGROUND INFORMATION: In June 1996 the Federal Communications Commission adopted a "Report and Order," taking steps to foster major improvements in the quality and reliability of 911 services available to the customers of wireless telecommunications service providers. The new system recommended is enhanced 911 or E911. E911 provides emergency service organizations (Public Safety Answering Points or PSAPs) with location information (ALI or Automatic Location Identification) and number of the cellular caller (ANI or Automatic Number Identification). At present wireless carriers usually provide access only to basic 9-1-1 services, which does not provide this information about cellular callers. GTE estimates that at least 25% of 911 calls made in North Carolina are made from a cellular or wireless telephone.

In December of 1997 the FCC adopted a more specific Memorandum Opinion and Order. In this document the FCC outlines a two phase implementation process for E911. In Phase I of the E911 deployment, carriers are required to relay the telephone number of the originator of a 911 call (ANI), and the location of the cell site or base station receiving a 911 call (a capability often provided through a technique known as ``pseudo-ANI'') to the designated emergency service organization (PSAP). For E911 Phase II, the FCC adopted rules requiring that, as of October 1, 2001, covered carriers provide to the designated PSAP the location of a 911 call by longitude and latitude within a radius of no more than 125 meters in 67 percent of all cases.

The FCC also stated that their mandate only applied if: 1) a PSAP capable of receiving and utilizing the E911 information requests that are wireless carrier provides that information and 2) a mechanism for cost recovery is available. This bill is an attempt to create a cost recovery structure.

ASSUMPTIONS AND METHODOLOGY:

Revenue: The Cellular Telecommunications Industry Association (CTIA) reports 55 million wireless phones exist nationwide. CTIA estimates national cellular market penetration is 20.52% of the population. Using the CTIA estimate, North Carolina's 1998-9 population projection of 7,670,783 suggests that 1,574,045 cellular phones will be used in North Carolina in FY 1998-9. No more specific information is available because cellular telephones are a deregulated industry, and each cellular provider's customer base is proprietary information.

Under the bill each cellular customer is charged $0.80 per month once the legislation is enacted. Given the above estimates of the number of cellular telephones, this will generate approximately $1,259,236 in revenue per month in 1998-9, for a 1998-9 total of $15.11 million. Past experience suggests that the industry will grow more than 10% annually, although no market projections are available. This note assumes a 10% growth rate in the number of cellular telephones in fiscal years 1999-2000 through 2002-3.

	Wireless Customers	Monthly Revenue	Annual Revenue	Less Carrier Adm. Fee
FY 1998-9	1,574,045	1,259,236	15,110,832	14,959,724
FY 1999-0	1,731,450	1,385,160	16,621,915	16,455,696
FY 2000-1	2,077,739	1,662,192	19,946,298	19,746,835
FY 2001-2	2,493,287	1,994,630	23,935,558	23,696,202
FY 2002-3	2,991,945	2,393,556	28,722,669	28,435,443

The amounts under the "Less Carrier Adm. Fee" funds are placed a special Wireless Fund. One percent of the amount can be used by the Board for administration.

Wireless Costs: Moines from the Wireless fund can be used for two types of expenses during Phase 1. First, commercial mobile radio service (CMRS) providers such as GTE, Bell South Mobility, and 360 Communications, can be reimbursed from the fund for the costs associated with the FCC Order. These costs are generally those associated with the technological changes needed to be able to 1) discover the telephone number of the caller and 2) find their approximate location - i.e. their nearest cellular tower. Because specific costs and customer information is proprietary, industry representatives are only willing to provide an average monthly cost estimate. For the larger companies, these estimates are based on a national model, and include start up and maintenance costs to be incurred between this summer and December 2001. In a consensus industry document, GTE estimates the cost for large, established providers with a large existing customer base will be between $0.15 and $0.27 per subscriber per month. The estimate for smaller, new competitor entrants is likely to be between $0.20 and $0.35 per subscriber per month. Currently there are 38 license holders in North Carolina that could apply for the funds. In the near future that number will increase to near 100. The specific types of costs are as follows:

Non-recurring/Upfront Costs
Switch Software/Hardware Upgrades
Database Development
Installation
Network Design and Connectivity
Map Overlay
Testing

Recurring/Monthly Costs
Database Usage and Administration
Routine Maintenance
Administrative (technical, etc.)
Trunkng
Map Updates

CMRS providers are required to submit sworn invoices to the board before reimbursement. Industry officials do not expect to begin submitting invoices until December 1998. Most industry officials expect that the transition to E911 will be gradual over the next three years. The local 911 service must request the enhanced service before the industry can begin upgrading the technology. Sixty percent (60%) of the funds in the Wireless Fund shall be used to reimburse these CMRS providers.

PSAP Costs: A second type of cost associated with enhanced 911 service is to the organization that answers 911 calls. These are referred to in the bill as PSAPs or public safety answering points. At present North Carolina has 258 PSAPs.

According the representatives from the National Emergency Number Association and the Association of Public Safety Communications Officials, the actual cost to upgrade center hardware and software to take enhanced 911 calls will differ dramatically. According to association representatives the cost per center will be between $3,000 and $300,000. The association representatives also note that all PSAPs may not be interested in participating in the program. These PSAPs may determine that it would be more effective to forward the calls to another center, or that the local cellular load does not justify the added expense. Under the bill 40% of the fund revenue is used by the PSAPs.

Phase II Costs: At this point no cost estimates are available from the industry regarding the potential phase II costs.

TECHNICAL CONSIDERATIONS: Because the vast majority of information surrounding this issue is proprietary, exact start up and maintenance costs are not available. Industry representatives are not able to provide cost information on phase II at this time, as they believe the technology may change substantially by the end of 2001. No cost or revenue estimates are available for the communications towers portion of the bill.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 7, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carrie Abtman	Science & Technology
Andrea Warren	Science & Technology
Heather Gail	OSA
John May	NC CWA
Mike Dunn	NC State AFSCME
Patti Stowell	DOR
Nancy Pomeranz	DOR
Susan Markham	EGHS
Bob Wells	N.C. TELCO Alliance
Amy Knight	BellSouth
Danny Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE **Tuesday, July 7, 1998**

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Kuhn	Kilpatrick Stockton
Allyson Duncan	Kilpatrick Stockton
Jerry Bowles	
Bill Dowd	DOR
Mary Nunnelee	Poyner + Spruill
Mark Bacon	Capitol Group
Natalie Haskins	Charlotte Chamber
Michelle Cook	Weyerhaeuser
John Poteat	ATST
Willie Riddick	DOR
Janice Arnold	SEANC
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE **Tuesday, July 7, 1998**

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Peters	NP Assoc/ ElectriCities
Estherpine Davis	ElectriCities of NC
Andy Ellis	WBSR
Sandy Sands	WCSR
Cam Cover	BPMH&L
Jean Mitchell	Moore · Van Allen
Jim Black	NCAFI
Jim Blackburn	NC Association of County Commissioners
David Simmons	ZOA, PA
Andy Romanet	N.C.L.M.
Amy Fullbright	Hunton & Williams
Tom Murphy	Sprint
Brenda Dougherty	Sprint

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, 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 -
	Sen Hoyle's office
	N.C. Assoc of Co. Comm -
Saba Fains	Dept. of Revenue
	OSBM
Crissy Parker	Bone & Associates
LEIGHTON ROPER	M & VA
GEORGE TEAGUE	"

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, July 8, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**1504** Pembroke Annexation.
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1637** Cape Carteret Annexation Repeal.
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1638** Morehead City Satellite Annexations.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: July 7 HB 1504 1637 and 1638

AGENDA

SENATE FINANCE MEETING

WEDNESDAY, JULY 8, 1998

12:00 NOON - ROOM 544 LOB

Opening of the Meeting - Senator David Hoyle, Presiding

Introduction of the Pages

Bills to be considered:

SB 1300 - Insurance Reg. Charge/Company Exams - Sen. Odom
SB 1393 - Modify Historic Rehab Credit - Sen. Horton
SB 1408 - Tax Return Donation for Habitat - Sen. Wellons
SB 1242 - Wireless Telephone Service - Sen. Hoyle
SB 1433 - Exempt Voluntary Severance Pay - Sen. Hoyle
SB 1552 - Notary Public Act - Sen. Kerr
HB 1594 - Franchise Distribution Repayment - Rep. Weatherly

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 8, 1998

12:00 NOON - ROOM 544-LOB

The Senate Finance Committee met on Wednesday, July 8, 1998 at 12:00 Noon in Room 544 LOB. There were 23 members of the committee present. Senator Hoyle, Co-chairman called the meeting to order and introduced the Pages, they were: Bret Turner from Crouse, North Carolina, and Charlie Smith from Cherryville, North Carolina, both sponsored by Senator David Hoyle and Tyler Amas from Summerfield, North Carolina, sponsored by Senator Robert Shaw

S. B. 1300 - Insurance Reg. Charge/Company Exams

Senator Fountain Odom came to explain the bill. Senator Hoyle moved to adopt the proposed committee substitute for the purpose of discussion, motion passed. Mr. Bill Hale from the Department of Insurance spoke on the bill. Mr. Bob Price representing the industry spoke on the bill. After some questions from members of the committee, Senator Charlie Dannelly moved to give the pcs a "favorable" report, motion passed. (Copy of the Bill, Proposed Committee Substitute, Explanation and Fiscal Note are included in the Minutes).

H. B. 1594 - Franchise Distribution Repayment

Senator Roy Cooper moved to reconsider the vote at the July 1, 1998 meeting to give this bill a "favorable" report, motion passed. Senator Hugh Webster made a motion to adopt the proposed committee substitute for the purpose of discussion, motion passed. Representative John Weatherly explained the pcs. Sabre Faires with the Department of Revenue spoke on the bill. After numerous questions and comments from the members of the committee, Senator Walter Dalton moved for a "favorable" report, motion failed. It was then decided to put the bill aside and take it up for discussion at a later date. (Copy of Bill and Proposed Committee Substitute are included in the Minutes).

Senator John Kerr, Co-chairman, came to preside so that Senator Hoyle could explain the next bill.

S. B. 1242 - Wireless Telephone Service

Senator David Hoyle came to explain the bill and to move for adoption the proposed committee substitute for the purpose of discussion, motion passed. Senator Hoyle sent forward amendment #1 to this bill and moved for adoption, motion passed.

Senator Hoyle sent forward amendment #2 to this bill and moved for adoption, motion passed Senator Hoyle sent forward amendment #3 to this bill and moved for adoption, motion passed. Senator Hoyle sent forward amendment #4 to this bill and moved for adoption, motion passed. Senator Hoyle sent forward amendment #5 to this bill and moved for adoption, motion passed. Senator Fletcher Hartsell sent forward amendment #6 to this bill and moved for adoption, motion passed. Senator Hugh Webster sent forward amendment #7 to this bill and moved for adoption, motion **failed**. Senator Virginia Foxx sent forward amendment #8 to this bill and moved for adoption, motion passed. Senator Wib Gulley moved that S. B. 1242 as amended be rolled into a committee substitute and be given a "favorable" report, motion passed. (Copy of Bill, Proposed Committee Substitute containing the seven (7) amendments, Amendments, Explanation and Fiscal Note are included in Minutes).

S.B. 1393 - Modify Historic Rehabilitation Credit

Senator Hamilton Horton came to explain the bill. Senator Mark McDaniel moved for adoption of proposed committee substitute for discussion, motion passed. Mr. Richard Bostic, Fiscal Research Staff Counsel to Committee, spoke to the fiscal impact. Senator McDaniel moved for a "favorable" report. After several questions and comments by members of the committee, it was decided to carry the bill and the motion by Senator McDaniel over to a future meeting. (Copy of Bill is included in the Minutes).

S. B. 1433 - Exempt Voluntary Severance Pay

Senator David Hoyle came to explain the bill. Senator Hoyle moved for adoption of the proposed committee substitute for discussion, motion passed. After a time of discussion and questions on the bill, it was decided to carry the bill over to a later meeting. (Copy of Bill, Proposed Committee Substitute, Explanation of PCS and Fiscal Note on PCS are included in the Minutes).

S. B. 1408 - Tax Return Donation for Habitat -was not heard at this meeting.
S.B. 1552 - Notary Public Act-was not heard at this meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #1
Committee Report dated 7-8-98 is Attachment #2
Committee Report dated 7-9-98 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1300*

Short Title: Insurance Reg. Charge/Company Exams. (Public)

Sponsors: Senators Odom and Hoyle.

Referred to: Commerce.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is eight and seventy-five hundredths percent (8.75%) for the 1998 calendar year.

Section 2. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 3. G.S. 58-2-131(k) reads as rewritten:

"(k) ~~When making an examination,~~ For any examination of an insurer, if the Commissioner determines that appropriated resources within the Department are insufficient to conduct or complete the examination properly, the Commissioner may retain attorneys, appraisers, ~~independent~~ actuaries, ~~independent~~ certified public accountants, or other professionals and specialists ~~as examiners.~~ to assist the Commissioner in the examination, the cost of which shall be paid by the insurer pursuant to G.S. 58-2-134."

Section 4. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-134. Cost of examinations.

(a) For an examination of records or assets maintained in the State pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133, the insurer shall pay the actual expenses incurred by the Department in conducting the examination. Except as provided in subsection (b) of this section, the amount paid by an insurer for an examination shall not exceed one hundred thousand dollars ($100,000).

(b) An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State pursuant to G.S. 58-7-50 or G.S. 58-7-55.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business."

Section 5. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 6. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 7. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

~~The Commissioner is authorized to adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. Such rules shall be in accordance with the NAIC model rule that requires audited financial reports, as amended.~~ (a) The NAIC model rule requiring annual audited financial reports as provided for in the annual statement instructions is incorporated into this section by reference, except as specified in subsections (b) through (g) of this section.

(b) The annual audited financial report shall be filed with the Commissioner on or before May 10 for the previous calendar year. Two copies of this report shall be filed with the Chief Examiner in the Field Audit Section of the Department. An extension of the May 10 filing date may be granted by the Commissioner for a period of up to 45 days. The request for extension must be submitted in writing no sooner than 15 days before the due date.

(c) This requirement applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars ($250,000) in any year and having fewer than 500 policyholders in North Carolina at the end of any year are exempt from this requirement for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out the Commissioner's statutory responsibilities.

(d) Certified public accountants that intend to practice pursuant to the provisions of the annual statement instructions shall file a notice to that effect with the Commissioner by October 1 of each year. The Commissioner may reject the filing if the certified public accountant does not meet the requirements. The filing shall contain a statement from the certified public accountant affirming that the certified public accountant is aware of and will comply with the provisions of the annual statement instructions related to the definition, availability, and maintenance of certified public accountant workpapers and evidence of the certified public accountant's expertise in the areas of insurance auditing and insurance accounting. This evidence shall also demonstrate experience in the areas of insurance auditing and insurance accounting for the certified public accountant's staff members who are assigned to the audit.

(e) The certified public accountant may be deemed to be experienced in the areas of insurance auditing and accounting if the office filing with the Department pursuant to this section has existing audit clients in the insurance industry.

(f) The staff assigned to an audit under this section may be considered by the Commissioner to be experienced in the areas of insurance auditing and accounting if they meet the following criteria:

(1) Managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least thirty percent (30%) of its chargeable time during the last three years.

(2) Nonmanagerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least fifteen percent (15%) of its chargeable

time during the last three years or during the staff members' periods of employment if employed fewer than three years.

(g) An audit performed by a certified public accountant under this section shall be staffed by managerial staff experienced in the areas of insurance auditing and accounting and by a majority or an equal number of nonmanagerial staff experienced in the areas of insurance auditing and accounting.

(h) As used in this section, 'insurance' includes financial services."

Section 8. This act becomes effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1300*
Proposed Committee Substitute S1300-PCS8844-RB1

Short Title: Insurance Company Exams. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 2. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 3. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) "Commissioner" includes an authorized representative or designee of the Commissioner.
(2) "Examination" means an examination conducted under the Examination Law.
(3) "Examiner" means any person authorized by the Commissioner to conduct an examination.
(4) "Insurance regulator" means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.
(5) "Person" includes a trust or any affiliate of a person."

Section 4. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.
(2) The insurer requests an examination of its records or assets.
(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 5. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.
(2) Reserves to be maintained by insurers issuing funding agreements.
(3) Accounting and reporting of funds credited under funding agreements.
(4) Disclosure of information to be given to holders and prospective holders of funding agreements.
(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

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

EXPLANATION OF SENATE BILL 1300:
Proposed Committee Substitute
Insurance Company Examinations

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 8, 1998
SPONSOR: Senators Odom and Hoyle

The proposed committee substitute for **Senate Bill 1300** allows domestic insurers to maintain part of their records or assets outside the State and provides that the Department of Insurance may bill an insurance company for an examination of those records and assets.

Section 1 amends the law that requires every North Carolina insurance company to maintain its records and assets in this State by making it clear that the Commissioner may permit a domestic insurer to maintain a part of its records or assets outside North Carolina.

Sections 2 and 3 are technical. They amend two statutory provisions to include a cross-reference to the new statute section in Section 4 of the bill.

Section 4 adds a new section to the Examination Law that would provide that the Department of Insurance may bill an insurance company for an examination of its records and assets, up to a maximum billing of $100,000 (unless there is a mutual agreement for a higher amount), in only three situations:

1. When a North Carolina insurer keeps records and assets out of North Carolina and the Department needs to examine those out-of-state records or assets.
2. When an insurer requests an examination, usually this happens when another company wants to acquire or merge with the insurer and the insurer wants an official "stamp of approval" on its financial situation.
3. When an insurer is financially unstable. The last item is important because intervention by the Department through an examination can keep the insurer from becoming insolvent, thus avoiding a liquidation and assessments by a guaranty fund on all other insurers. Billing an impaired insurer does not cause further deterioration in the insurer's financial situation.

Section 5 amends the law that gives the Commissioner authority to regulate the issuance and sale of funding agreements. In determining the appropriate level of reserves to be required by the Commissioner, the Commissioner's actuarial staff has determined that the statute should reference and permit the Commissioner to use relevant guidelines published by the Society of Actuaries or the American Academy of Actuaries, when determined by the Commissioner to be reasonable.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1300
SHORT TITLE: Insurance Company Exams
SPONSOR(S): Proposed Committee Substitute

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES:	$100,000 every three years				
EXPENDITURES:	Equal to the cost of examination.				
POSITIONS:	None				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Insurance				
EFFECTIVE DATE:	When it becomes law.				

BILL SUMMARY: The proposed act expands the types of records and assets an insurance company can maintain outside the State. Under G.S. 58-7-55, certain exemptions exist that allow a domestic insurance company to maintain financial and accounting records outside the State so long as a company makes a written request and the Commissioner approves.

In the event approval is given to a company to hold certain records and assets outside the State the Commissioner of Insurance can charge for the examination of records in certain circumstances. An insurance company can be required to pay up to $100,000 of the Department's cost of examinations when the insurer maintains part of its records and or assets out of the State, when the insurer requests the Department examine its records, and when an insurer's solvency is in question. The cost can exceed $100,000 if the insurer and the Commissioner agree to a greater amount.

The Commissioner of Insurance is given the authority to regulate the issuance and sale of funding agreements in G.S. 58-7-16(f). Section 5 of this act, allows the Commissioner to use any relevant actuarial guidelines, regulations, interpretations or papers published by the Society of Actuaries or the American Academy of Actuaries in carrying out his authority to determine minimum valuation reserves to be maintained by the issuer.

ASSUMPTIONS AND METHODOLOGY:

The Department of Insurance does not expect many domestic companies to take advantage of this regulatory change except in certain circumstances. There is expected to be at least one that would be subject to this act within a three year period.

Data provide by the Department of Insurance.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY: Tom Covington
DATE: June 7, 1998

S1496

PUBLIC BILL

D 1594

H.B. _____

SESSION LAW _____

7/8/'98 - Sess
Rep. Weatherly
Sen. Cooper - reconsider Vote - Yes
Sen. Webster - Adopt pass - Yes
Sen. Dalton - motion failed - No
Carry over to Comm per Cindy

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF THE TOWN OF COLUMBUS FOR REPAYMENT OF ERRONEOUS FRANCHISE TAX DISTRIBUTIONS.

Introduced by Representative(s) Weatherly Dedmon Carry over to Comm per Cindy

Principal Clerk's Use Only

PASSED 1st READING
MAY 28 1998
REFERRED TO COMMITTEE
Finance

Committee/Subcommittee on Finance refers to Local, Regional + State Revenue.
Gray, Brawley, Dickson + C. Wilson
For the Committee

Referred to Committee/Subcommittee Local, Reg. & State Revenue
JUN 04 '98

Committee on Local, Reg. & State Revenue majority being present, having considered bill, recommend that it do ✓ pass.
Rep. Dail
For the Committee

REPORTED FAVORABLY JUN 10 1998

PLACED ON CALENDAR
JUN 10 1998
Pursuant to Rule 36(a)
6-15-98
72-23 EV VV
PASSED 2nd & 3rd READING
JUN 15 1998
ORDERED SENT TO SENATE

RECEIVED
JUN 16 1998
From House of Representatives
By Clerk 855 AM/PM

PASSED 1st READING
JUN 16 1998

The Committee on Finance to whom this bill was referred, a majority being present and voting, has carefully considered the same and recommended that it do ✓ pass.
For the Committee

REPORTED FAVORABLY JUL 1 1998

WITH UNANIMOUS CONSENT WITHDRAWN FROM Calendar
JUL 2 1998

PLACED ON CALENDAR FOR 7/7/98

WITH UNANIMOUS CONSENT WITHDRAWN FROM Calendar
JUL 7 1998

RE-REFERRED TO Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1594*

Short Title: Franchise Distribution Repayment. (Public)

Sponsors: Representatives Weatherly; Clary and Dedmon.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF THE TOWN OF COLUMBUS FOR REPAYMENT OF ERRONEOUS FRANCHISE TAX DISTRIBUTIONS.

Whereas, G.S. 105-116.1 provides for distribution of certain utility franchise tax proceeds to municipalities based on the amount of taxable utility sales within each municipality; and

Whereas, due to an incorrect report by a utility, the Town of Columbus received during a three-year period approximately one hundred eighty-seven thousand dollars ($187,000) of tax proceeds that should have been distributed to a different municipality; and

Whereas, repayment of these funds to which the town was not entitled would create a substantial hardship because of the town's small budget; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Town of Columbus is required to repay only fifty thousand dollars ($50,000) of the one hundred eighty-seven thousand dollars ($187,000) distributed to it erroneously under G.S. 105-116.1.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1594*
Proposed Senate Committee Substitute H1594-PCS7493-RB1

Short Title: Franchise Distribution Repayment. (Public)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LIABILITY OF THE TOWN OF COLUMBUS FOR REPAYMENT OF ERRONEOUS FRANCHISE TAX DISTRIBUTIONS.

Whereas, G.S. 105-116.1 provides for distribution of certain utility franchise tax proceeds to municipalities based on the amount of taxable utility sales within each municipality; and

Whereas, due to an incorrect report by a utility, the Town of Columbus received during a three-year period approximately one hundred fifty-three thousand four hundred ninety-eight dollars and twenty-two cents ($153,498.22) of tax proceeds that should have been distributed to a different municipality; and

Whereas, the erroneous overpayment to the Town exceeds twenty-five percent (25%) of the Town's annual general fund budget; and

Whereas, the Town has increased its property tax rate by fifteen cents (15¢) to help repay the erroneous distribution; and

Whereas, repayment of the total overpayment would create a substantial hardship on the Town; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Revenue is directed to recoup seventy-two thousand dollars ($72,000) of the total amount of erroneous franchise tax distribution made under G.S. 105-120 to the Town of Columbus during the period from April 1, 1994, through 1996. The Department shall recoup this amount by withholding a set amount from the Town's quarterly franchise tax distributions for quarters beginning July 1, 1998. The amount to be withheld for each quarter shall be determined by the

Department in consultation with the Town. Repayment of the amount stated in this section satisfies the Town's obligation concerning the erroneous franchise tax distributions.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98

Short Title: Wireless Telephone Service/Tower Act. (Public)

Sponsors:

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE COLOCATION OF SERVICES TO THOSE TOWERS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 62B.

"Wireless Telephone Service.

"**§ 62B-1. Definitions.**

As used in this Chapter:

(1) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

(2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

(3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

(4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.

(5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

(6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless Advisory Board.

(7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.

(8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.

(9) 'Mobile set telephone number' means the number assigned to a CMRS connection.

(10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.

(11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

(12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.

(14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.

(15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

(16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"**§ 62B-2. Wireless 911 Advisory Board.**

(a) There is created a Wireless 911 Advisory Board ('Board'), consisting of nine members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Three members appointed by the Speaker of the House of Representatives, two representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Three appointed by the President Pro Tempore of the Senate, one representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of five members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) The Board shall establish and maintain the Wireless Fund as an insured, interest-bearing account into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set

forth in this Chapter. The Board may invest the revenue in the Wireless Fund in the same manner that State funds may be invested. The Board shall deposit any income earned from such an investment in the Wireless Fund.

(d) The Board may disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning July 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board every two years, beginning July 1, 2000. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents ($1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a collection action may be initiated by the Board and reasonable costs and attorneys' fees associated with that collection action may be awarded.

(c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

(d) Each CMRS provider shall be entitled to deduct a one percent (1%) administrative fee from the total service charges collected.

(e) All service charges collected by the CMRS providers, less the administrative fee described in subsection (d) of this section, are to be remitted to the Board to be placed in the Wireless Fund, not later than 30 days after the end of the calendar month in which such service charges are collected.

"**§ 62B-5. Use of funds.**

(a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be held in escrow and used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service.

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). The 40% Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. The population data to be used will be those numbers on file with the Secretary of State. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved

invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

"§ 62B-6. Distributions of funds.

(a) The Board shall, upon majority vote, retain an independent, third-party accounting firm for the purposes of processing checks and distributing funds as directed by the Board, in accordance with the provision of this Chapter.

(b) The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to adjust the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its ten thousand number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Notwithstanding any other provision of law, no proprietary information submitted pursuant to this Chapter shall be subject to the North Carolina Public Records Law or subpoena, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

Notwithstanding any other provision of law, no CMRS provider, local exchange company, service supplier, PSAP, the Board or their employees, directors, officers, or agents, except in cases of wanton and willful misconduct, shall be liable for any

damages in a civil action or subject to criminal prosecution resulting from death or injury to the person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system.

"§ 62B-12. Misuse of wireless 911 system; penalty.

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars ($100.00), the person is guilty of a Class 1 misdemeanor."

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

"(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The Wireless 911 Advisory Board."

Section 3. G.S. 136-18 is amended by adding a new subdivision to read:

"(35) The Department of Transportation may lease land, or any interest thereof, for the purposes of construction and placement of communications towers on State land controlled by the Department of Transportation or for placement of antennas upon State-owned structures controlled by the Department of Transportation. The following requirements shall apply to such leases:

a. The lease shall require the lessee to permit other telecommunications carriers to colocate on the communications tower on commercially reasonable terms between the lessee and the colocating carrier until the communications tower reaches its capacity. Unless the Department of Transportation determines that colocation is unfeasible at that location, the communications tower shall be designed and constructed to accommodate at least one other carrier on the tower.

b. The Department of Transportation shall, in determining the location of lands to be leased for communications towers,

encourage communications towers to be located near other communications towers to the extent technically desirable.

c. The Department of Transportation shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this subdivision, 'colocate and colocation' mean the sharing of a communications tower for two or more services.

City and county zoning ordinances apply to leases and rentals created under this subdivision.

Leases created under this subdivision do not require approval under G.S. 146-29."

Section 4. G.S. 146-29 reads as rewritten:

"**§ 146-29. Procedure for sale, lease, or rental.**

(a) If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G.S. 146-74 through 146-78.

(b) The State may lease land, or any interest thereof, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to colocate on the communications tower on commercially reasonable terms between the lessee and the colocating carrier until the communications tower reaches its capacity. Unless the State determines that colocation is unfeasible at that location, the communications tower shall be designed and constructed to accommodate at least one other carrier on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this subsection, 'colocate and colocation' mean the sharing of a communications tower by two or more services.

City and county zoning ordinances apply to leases and rentals created under this subsection."

Section 5. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. Sections 1 and 2 of this act become effective 90 days after it becomes law. Appointments to the Wireless 911 Advisory Board created in G.S. 62B-2 shall be made within 30 days of the effective date of Sections 1 and 2 of this act. The remainder of this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1242*
Proposed Committee Substitute S1242-CSRL-011

Short Title: Wireless Telephone Service/Tower Act. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 62B.

"Wireless Telephone Service.

"§ 62B-1. Definitions.

As used in this Chapter:

(1) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.

(2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

(3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

(4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.

(5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

(6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.

(7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.

(8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.

(9) 'Mobile set telephone number' means the number assigned to a CMRS connection.

(10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152,

and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.

(11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

(12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.

(14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.

(15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

(16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"§ 62B-2. Wireless 911 Board.

(a) There is created a Wireless 911 Board ('Board'), consisting of eleven members as follows:

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, two representing CMRS providers licensed to do

business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, one representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of six members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter.

(d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"**§ 62B-3. Amount of service charge.**

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time,

of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed one dollar and twenty-five cents ($1.25).

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"**§ 62B-4. Management of funds.**

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a collection action may be initiated by the Board and reasonable costs and attorneys' fees associated with that collection action may be awarded.

(c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

(d) Each CMRS provider shall be entitled to deduct a one percent (1%) administrative fee from the total service charges collected.

(e) All service charges collected by the CMRS providers, less the administrative fee described in subsection (d) of this section, are to be remitted to the Board to be placed in the Wireless Fund, not later than 30 days after the end of the calendar month in which such service charges are collected.

"**§ 62B-5. Use of funds.**

(a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order

and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the 40% Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The 40% Fund shall be distributed as follows:

(1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Planning. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC

Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system.

(f) On February 15, 2000, and every two years thereafter the Board shall report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The report shall contain complete information regarding receipts and expenditures of all funds received by the Board during the period covered by the report as well as the status of wireless Enhanced 911 systems in North Carolina at the time of the report. The first report shall cover the period from the formation of the Board to December 31, 1999. Each succeeding report shall cover the two year period of time from the ending date of the previous report.

"§ 62B-6. Administrative fee.

The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local

exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its ten thousand number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. CMRS connection information obtained by PSAP personnel for public safety purposes is not public information under Chapter 132 of the General Statutes. No person shall disclose or use, for any purpose other than for the wireless 911 calling system, information contained in the data base of the telephone network portion of a wireless 911 calling system established pursuant to this Chapter.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Proprietary information submitted pursuant to this Chapter shall not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

A CMRS provider, local exchange company, service supplier, or their employees, directors, officers, or agents, except in case of wanton and willful misconduct, shall not be liable for any damages in a civil action resulting from death or injury to any

or

person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle.

"**§ 62B-12. Misuse of wireless 911 system; penalty.**

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service or information for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars ($100.00), the person is guilty of a Class 1 misdemeanor."

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

"(c) Full Exemptions. -- This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The Wireless 911 Board."

Section 2.1. G.S. 62A-10 reads as rewritten:

"**§ 62A-10. Limitation of liability.**

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"**§ 146-29.2. Lease provisions for communications towers.**

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county zoning ordinances apply to leases and rentals created under this section."

Section 4. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

North Carolina General Assembly
Legislative Services Office

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

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

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

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

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 7, 1998

MEMORANDUM

TO: **Senate Committee on Finance**

FROM: **Steven Rose, Principal Attorney**

RE: **Proposed Committee Substitute for Senate Bill 1242; Wireless 911 Telephone Service and Tower Act**

The proposed committee substitute for Senate Bill 1242 establishes a system for charging cellular telephone users for enhanced 911 service and establishes a method of administering and distributing the funds collected. It also provides authority to the State to lease space on State land and buildings for the purpose of locating wireless telecommunications facilities.

Section 1 of the bill adds Chapter 62B to the General Statutes. G.S. 62B-2 creates an eleven member Wireless 911 Advisory Board which will determine the service charge to be levied on cellular telephone users for wireless enhanced 911 service, aggregate the charges collected, and distribute them for purposes of paying for these systems. The Board consists of two members appointed by the Governor, one upon the recommendation of the League of Municipalities, and one upon the recommendation of the Association of County Commissioners; four members appointed by the Speaker, a sheriff, two representing CMRS (Commercial Mobile Radio Service) providers and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials; four appointed by the President Pro Tempore, a chief of police, one representing CMRS providers, one representing local exchange carriers, and one representing the North Carolina Chapter of the National Emergency Number Association. The Chair of the Board is the Secretary of Commerce, or the Secretary's designee. Terms are four years and limited to two successive terms.

Under G.S. 62B-3, the initial rate authorized is 80 cents per month. This may be adjusted every two years but may not exceed $1.25 per month.

Under G.S. 62B-4, the CMRS providers collect the monthly fee from their customers and may deduct one percent for administrative expenses.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Use of the funds is restricted under G.S. 62B-5. Sixty percent may be used to reimburse cellular service providers for complying with wireless 911 requirements established by FCC order, including design, upgrade, purchasing, leasing, programming, installing, testing and maintaining of hardware and software components and data necessary to operate the system. Forty percent is distributed to the public safety answering points (the agencies that receive incoming 911 calls and make the dispatches). The use of these funds is restricted to direct costs of establishing and maintaining a wireless enhanced 911 system. The Board may retain one percent of funds collected for administrative expenses.

G.S. 62B-5(e) requires each PSAP to report wireless 911 related income and expenses annually to the Board. G.S. 62B-5(f) requires the Board to make biennial reports to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee.

G.S. 62B-8 gives the State Auditor authority to perform audits to ensure that funds are being managed in accordance with the provisions of the act. An audit must be performed at least every two years.

G.S. 62B-9 and 62B-10 protect customer records and proprietary information from public disclosure.

G.S. B-11 limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

Under G.S. 62B-12, misuse of a wireless 911 system or information will be a Class 3 misdemeanor, unless the value of the charge or service obtained exceeds $100, in which case it is a Class 1 misdemeanor.

The Wireless 911 Advisory Board is not subject to the Administrative Procedures Act.

Section 2.1 amends G.S. 62A-10, which limits liability in connection with the supplying of services for a hard-wired 911 system. It adds a provision clarifying that G.S. 62A-10 does not apply to motor vehicle liability.

Section 3 of the bill amends Chapter 146 by adding a new section authorizing the State to enter into leases for location of telecommunications towers on State real property and for placement of antennas upon state structures. Lessees must permit other carriers to co-locate on communications towers under contracts between the leasee and the co-locating carrier and, unless the State determines co-location to be infeasible, towers must be constructed to accommodate other carriers. The State is to encourage towers to be located near each other and must choose locations which minimize the visual impact on surrounding landscape. City and county zoning ordinances will apply to such leases.

The act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: July 6, 1998

TO: Senate Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: S.B. 1242 - Wireless Telephone Service/Tower Act

FISCAL IMPACT

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

Millions

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Wireless Fund	**14.96**	**16.46**	**19.75**	**23.70**	**28.44**
EXPENDITURES					
Administration	**0.15**	**0.16**	**0.20**	**0.24**	**0.28**

Other Expenditure Estimates Not Possible at this Time

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wireless 911 Board, Department of Administration.

EFFECTIVE DATE: Sections 1 and 2 become effective 90 days after it becomes law. Appointments to the Wireless board shall be made within 30 days of the effective dates of sections 1 and 2. The remainder becomes effective when it becomes law.

BILL SUMMARY: The bill creates a Wireless 911 Board, establishes the Wireless Fund, and directs the board to oversee the fund's operation. An $0.80 per month per subscriber charge on wireless customers statewide will generate revenue for the fund. Under the bill the carrier (Bell South Mobility, GTE, 360 Communications, etc.) collects the subscriber charge, and retains 1% of the total revenue to cover the costs of administration. The Wireless 911 board will also retain 1% for its expenses. The remaining revenue raised is distributed 60% to wireless carriers and 40% to the organizations that answer 911 calls. Of the 40% distributed to 911 organizations, 50% is divided equally among the total number of 911 organizations, and 50% is distributed

according to population. The board can revise the fee every two years to a maximum rate of $1.25 per month per customer. The board is required to report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The bill also releases state agencies to lease public property for the construction of wireless communication towers.

BACKGROUND INFORMATION: In June 1996 the Federal Communications Commission adopted a "Report and Order," taking steps to foster major improvements in the quality and reliability of 911 services available to the customers of wireless telecommunications service providers. The new system recommended is enhanced 911 or E911. E911 provides emergency service organizations (Public Safety Answering Points or PSAPs) with location information (ALI or Automatic Location Identification) and number of the cellular caller (ANI or Automatic Number Identification). At present wireless carriers usually provide access only to basic 9-1-1 services, which does not provide this information about cellular callers. GTE estimates that at least 25% of 911 calls made in North Carolina are made from a cellular or wireless telephone.

In December of 1997 the FCC adopted a more specific Memorandum Opinion and Order. In this document the FCC outlines a two phase implementation process for E911. In Phase I of the E911 deployment, carriers are required to relay the telephone number of the originator of a 911 call (ANI), and the location of the cell site or base station receiving a 911 call (a capability often provided through a technique known as ``pseudo-ANI") to the designated emergency service organization (PSAP). For E911 Phase II, the FCC adopted rules requiring that, as of October 1, 2001, covered carriers provide to the designated PSAP the location of a 911 call by longitude and latitude within a radius of no more than 125 meters in 67 percent of all cases.

The FCC also stated that their mandate only applied if: 1) a PSAP capable of receiving and utilizing the E911 information requests that are wireless carrier provides that information and 2) a mechanism for cost recovery is available. This bill is an attempt to create a cost recovery structure.

ASSUMPTIONS AND METHODOLOGY:

Revenue: The Cellular Telecommunications Industry Association (CTIA) reports 55 million wireless phones exist nationwide. CTIA estimates national cellular market penetration is 20.52% of the population. Using the CTIA estimate, North Carolina's 1998-9 population projection of 7,670,783 suggests that 1,574,045 cellular phones will be used in North Carolina in FY 1998-9. No more specific information is available because cellular telephones are a deregulated industry, and each cellular provider's customer base is proprietary information.

Under the bill each cellular customer is charged $0.80 per month once the legislation is enacted. Given the above estimates of the number of cellular telephones, this will generate approximately $1,259,236 in revenue per month in 1998-9, for a 1998-9 total of $15.11 million. Past experience suggests that the industry will grow more than 10% annually, although no market projections are available. This note assumes a 10% growth rate in the number of cellular telephones in fiscal years 1999-2000 through 2002-3.

	Wireless Customers	Monthly Revenue	Annual Revenue	Less Carrier Adm. Fee
FY 1998-9	1,574,045	1,259,236	15,110,832	14,959,724
FY 1999-0	1,731,450	1,385,160	16,621,915	16,455,696
FY 2000-1	2,077,739	1,662,192	19,946,298	19,746,835
FY 2001-2	2,493,287	1,994,630	23,935,558	23,696,202
FY 2002-3	2,991,945	2,393,556	28,722,669	28,435,443

The amounts under the "Less Carrier Adm. Fee" funds are placed a special Wireless Fund. One percent of the amount can be used by the Board for administration.

Wireless Costs: Moines from the Wireless fund can be used for two types of expenses during Phase 1. First, commercial mobile radio service (CMRS) providers such as GTE, Bell South Mobility, and 360 Communications, can be reimbursed from the fund for the costs associated with the FCC Order. These costs are generally those associated with the technological changes needed to be able to 1) discover the telephone number of the caller and 2) find their approximate location - i.e. their nearest cellular tower. Because specific costs and customer information is proprietary, industry representatives are only willing to provide an average monthly cost estimate. For the larger companies, these estimates are based on a national model, and include start up and maintenance costs to be incurred between this summer and December 2001. In a consensus industry document, GTE estimates the cost for large, established providers with a large existing customer base will be between $0.15 and $0.27 per subscriber per month. The estimate for smaller, new competitor entrants is likely to be between $0.20 and $0.35 per subscriber per month. Currently there are 38 license holders in North Carolina that could apply for the funds. In the near future that number will increase to near 100. The specific types of costs are as follows:

Non-recurring/Upfront Costs
Switch Software/Hardware Upgrades
Database Development
Installation
Network Design and Connectivity
Map Overlay
Testing

Recurring/Monthly Costs
Database Usage and Administration
Routine Maintenance
Administrative (technical, etc.)
Trunkng
Map Updates

CMRS providers are required to submit sworn invoices to the board before reimbursement. Industry officials do not expect to begin submitting invoices until December 1998. Most industry officials expect that the transition to E911 will be gradual over the next three years. The local 911 service must request the enhanced service before the industry can begin upgrading the technology. Sixty percent (60%) of the funds in the Wireless Fund shall be used to reimburse these CMRS providers.

PSAP Costs: A second type of cost associated with enhanced 911 service is to the organization that answers 911 calls. These are referred to in the bill as PSAPs or public safety answering points. At present North Carolina has 258 PSAPs.

According the representatives from the National Emergency Number Association and the Association of Public Safety Communications Officials, the actual cost to upgrade center hardware and software to take enhanced 911 calls will differ dramatically. According to association representatives the cost per center will be between $3,000 and $300,000. The association representatives also note that all PSAPs may not be interested in participating in the program. These PSAPs may determine that it would be more effective to forward the calls to another center, or that the local cellular load does not justify the added expense. Under the bill 40% of the fund revenue is used by the PSAPs.

Phase II Costs: At this point no cost estimates are available from the industry regarding the potential phase II costs.

TECHNICAL CONSIDERATIONS: Because the vast majority of information surrounding this issue is proprietary, exact start up and maintenance costs are not available. Industry representatives are not able to provide cost information on phase II at this time, as they believe the technology may change substantially by the end of 2001. No cost or revenue estimates are available for the communications towers portion of the bill.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S1242-ALA-001

Date_____,1998

Comm. Sub. [YES]
Amends Title []

moves to amend the bill on page 5, line 29-30, by deleting those lines;

and on page 5, line 31, by deleting "(d)" and substituting "(c)";

and on page 5, line 34, by deleting "(e)" and substituting "(d)";

and on page 5, line 35, by deleting "(d)" and substituting "(c)";

and on page 10, lines 28 and 29, by inserting the following new sections:

"Section 4. G.S. 105-120 is amended by adding a new subsection to read:

"(c1) Enhanced 911 service charge. -- Gross receipts of an entity that provides local telecommunications service do not include wireless Enhanced 911 service charges imposed under G.S. 62B-3 and remitted to the Wireless 911 Board under G.S. 62B-4."

Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount of wireless Enhanced 911 service charges collected under G.S. 62B-3 and remitted to the Wireless Board under G.S. 62B-4.";

and on page 10, line 29, by deleting "4" and substituting "6";

and on page 10, line 35, by rewriting the line to read:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

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

S1242-ALA-001 Page 2 of __

"Section 7. Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of the act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

S1242-ARL-001 Page 1 of 1

Date _____,1998

Comm. Sub. [YES] (S1242-CSRL-011)
Amends Title []

Sen Hoyle

moves to amend the bill on page 3, line 35, by deleting the word "eleven" and substituting the word "thirteen"; and

on page 3, line 41, by deleting the word "Four" and substituting the word "Five"; and

on page 3, line 44, by deleting the word "two" and substituting the word "three"; and

on page 4, line 4, by deleting the word "Four" and substituting the word "Five"; and

on page 4, line 7, by deleting the word "one" and substituting the word "two"; and

on page 4, line 15, by deleting the word "six" and substituting the word "seven".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #3
(to be filled in by
Principal Clerk)

S1242-ARL-002 Page 1 of 1

Date _____ ,1998

Comm. Sub. [YES] (S1242-CSRL-011)
Amends Title []

Sen. Hoyle

moves to amend the bill on page 5, line 36,
by deleting the words "the Board to be placed in".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #4
(to be filled in by
Principal Clerk)

S1242-ARL-003

Date _____ ,1998

Comm. Sub. [YES] (S1242-CSRL-011)
Amends Title []

Sen. Hoyle

moves to amend the bill on page 6, line 33, by inserting the following language after the word "PSAP.": "However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter."; and

on page 6, lines 38 and 39, by rewriting those lines to read: "January 31 of each year will then be distributed to each of the eligible PSAPs based on the population served by the PSAP.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #5
(to be filled in by
Principal Clerk)

S1242-ARL-004

Date _____ ,1998

Comm. Sub. [YES] (S1242-CSRL-011)
Amends Title []

Sen

1 moves to amend the bill on page 8, line 43,
2 by deleting the word "and" and substituting the word "or".
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #6
(to be filled in by
Principal Clerk)

S1242-ALA-003

Date July 8 ,1998

Comm. Sub. [YES]
Amends Title []

Senator Hartsell

moves to amend the bill on page 10, line 27,
by deleting the word "zoning".

SIGNED Hutch L. Hartsell Jr.
Amendment Sponsor

SIGNED J. Kerr
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO. #7
(to be filled in by
Principal Clerk)

S1242-ARL-005

Date _____,1998

Comm. Sub. [YES] (S1242-CSRL-011)
Amends Title []

Senator Webster

moves to amend the bill on page 5, between lines 8 and 9, by adding the following:

"(c1) No CMRS provider may levy the charge authorized in this section against a CMRS connection belonging to a person who resides, is employed, or is a student in a county which does not have at least ninety-five percent of the area of that county able to receive reliable commercial mobile radio service.".

SIGNED Webster
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 1242, PCS Amendment No. #8
(to be filled in by Principal Clerk)

Rep.)
Sen.) Foxx

moves to amend the bill on page 9, lines 17 - 29

by deleting Section 2 of the bill;

and on pg 9, line 30,
by renumbering Section 2.1 as Section 2.

SIGNED Virginia Foxx

ADOPTED _____ FAILED _____ TABLED _____

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1393

Short Title: Modify Historic Rehabilitation Credit. (Public)

Sponsors: Senators Horton; Albertson, Ballance, Ballantine, Carpenter, Carrington, Cochrane, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garwood, Gulley, Hartsell, Hoyle, Jenkins, Kerr, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Moore, Odom, Page, Perdue, Plyler, Purcell, Reeves, Shaw of Cumberland, Shaw of Guilford, Warren, Weinstein, and Winner.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE HISTORIC REHABILITATION TAX CREDIT TO THE GROSS PREMIUMS TAX AND TO ALLOW THE TAX TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 3C.

"Historic Rehabilitation Tax Credits.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and

certified as such by the State Historic Preservation Officer prior to the commencement of the work.

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

(4) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.

(5) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State."

Section 2. G.S. 105-130.42 is recodified as G.S. 105-129.26 in Article 3C of Chapter 105 of the General Statutes.

Section 3. G.S. 105-129.26 reads as rewritten:

"**§ 105-129.26. Credit for rehabilitating an historic structure.**

(a) Income-Producing Historic Structure. -- A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualifying rehabilitation expenditures for a certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Division. The amount of the credit is~~ equal to twenty percent (20%) of the expenditures that qualify for the federal credit. A pass-through entity that qualifies for the credit provided in this subsection may allocate the credit among any of its owners in its discretion. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners shall include with their tax returns for every taxable year in which an allocated credit is claimed a copy of the allocation made by the pass-through entity.

(b) Nonincome-Producing Historic Structure. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Division. The amount of the credit is~~ equal to thirty percent (30%) of the rehabilitation expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation

Officer verifying that the historic structure has been rehabilitated in accordance with this subsection. ~~The following definitions apply in this subsection:~~

~~(1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.~~

~~(2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. The expenditures must, within a 24-month period, exceed twenty-five thousand dollars ($25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.~~

~~(3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.~~

~~(4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.~~

(b1) Tax Election. -- The credits provided in this section are allowed against the income taxes levied in Article 4 of this Chapter and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(c) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(d) Rules. -- The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section."

Section 4. G.S. 105-151.23 is recodified as G.S. 105-129.26. G.S. 105-129.26, as amended by this act, incorporates both G.S. 105-130.42 and G.S. 105-151.23.

Section 5. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1433

Short Title: Exempt Voluntary Severance Pay. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE INCOME TAX EXEMPTION FOR SEVERANCE PAY TO INCLUDE CERTAIN VOLUNTARY TERMINATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(b)(11) reads as rewritten:

"(11) Severance wages received by a taxpayer from an employer as the result of (i) the taxpayer's permanent, involuntary termination from employment through no fault of the ~~employee.~~ taxpayer or (ii) the taxpayer's permanent, voluntary termination from employment through no fault of the taxpayer as a result of the elimination of the taxpayer's position, the permanent closing of the employer's business, or the sale or reorganization of the employer's business. The amount of severance wages deducted as the result of the same termination may not exceed thirty-five thousand dollars ($35,000) for all taxable years in which the wages are received. To claim the deduction allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the taxpayer, and no deduction shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1433
PROPOSED COMMITTEE SUBSTITUTE
S1433-CSRB-1

Short Title: Exempt Voluntary Severance Pay. (Public)

Sponsors:

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE INCOME TAX EXEMPTION FOR SEVERANCE PAY TO INCLUDE VOLUNTARY TERMINATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(b)(11) reads as rewritten:

"(11) Severance wages received by a taxpayer from an employer as the result of the taxpayer's ~~permanent, involuntary~~ termination from employment through no fault of the employee. The amount of severance wages deducted as the result of the same termination may not exceed thirty-five thousand dollars ($35,000) for all taxable years in which the wages are received."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 1433 (PCS):
Exempt Voluntary Severance Pay

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 5, 1998
SPONSOR: Senator Hoyle

Senate Bill 1433 expands the income tax exclusion for involuntary severance pay to include severance pay a taxpayer receives as a result of electing voluntary termination when the taxpayer would otherwise have been at risk of involuntary termination, not for fault, as part of the employer's business plan to reduce its workforce. The bill further modifies the exclusion by limiting it to taxpayers whose adjusted gross income is below $70,000 for married couples filing jointly or $42,000 for single individuals. The bill would become effective for taxable years beginning on or after January 1, 1998.

In 1996, the General Assembly enacted an income tax exclusion for severance pay a taxpayer receives due to the permanent closure of a manufacturing or processing plant, not to exceed a maximum of $35,000 for the taxable year. In 1997, the General Assembly expanded the tax exemption to include severance pay received due to any involuntary termination through no fault of the employee. The expanded exemption included being fired without cause, being laid off due to a reduction in force, as well as being terminated due to plant closure. The act also expanded the tax exemption to cover any type of job in the private sector, not just a job at a manufacturing plant. Finally, the act clarified that the $35,000 cap applied to the total amount paid to an employee by an employer for the same termination, regardless of when the taxpayer received the money. This change prevented taxpayers from avoiding the $35,000 cap by arranging to receive part of the severance pay in December and the rest in January.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1433 (Proposed Senate Finance Committee Substitute)
SHORT TITLE: Exempt Voluntary Severance Pay

FISCAL IMPACT

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

	($Million) 98-99	99-00	00-01	01-02	02-03
REVENUES:					
STATE GENERAL FUND	**-$1.8**	**-$1.8**	**-$1.8**	**-$1.8**	**-$1.8**

PRINCIPAL DEPARTMENT AFFECTED: Department of Revenue.

EFFECTIVE DATE: Tax years beginning on or after January 1, 1998.

*Revenue impact has already been included on annual General Fund revenue estimates as part of cost of 1996 and 1997 legislation on issue (See "Assumptions and Methodology")

BILL SUMMARY: The 1996 General Assembly enacted a bill allowing a $35,000 income tax exclusion per year for severance pay that results from the permanent closure of a manufacturing or processing plant. The 1997 General Assembly widened the exclusion to include all industries but also tightened the language to restrict the exclusion to a maximum of $35,000 for all taxable years and made the exclusion apply to a taxpayer's permanent, involuntary termination through no fault of the taxpayer. **The bill expands the exclusion to apply to severance pay received as a result of the taxpayer's electing a voluntary termination when the taxpayer would have otherwise been at risk of a forced termination as part of the employer's plan to reduce its workforce. In addition, the bill modifies the exclusion by limiting it to taxpayers whose adjusted gross income is less than $70,000 for married couples filing jointly ($60,000 for head of household and $42,000 for single filers).**

ASSUMPTIONS AND METHODOLOGY: The revenue impact estimates developed under the 1996 and 1997 legislation were based on an analysis of Employment Security Commission data on mass layoffs (50 or more employees) required to be reported under federal law and private establishment closings and permanent layoffs announced in news reports. These estimates indicate that the 1998-99 fiscal year cost of the 1996 and 1997 bills is $6.1 million. This number includes severance pay for all establishment closings and permanent layoffs, regardless of whether the job elimination occurred through the voluntary resignation or retirement of the employee as part of an separation incentive.

An extensive internet search was unsuccessful in uncovering hard data on the proportion of terminations where voluntary severance pay applies or the dollars involved. Part of the problem is the sensitive nature of downsizings and competitive practices within an industry. The best sources of information included a Government Accounting Office (GAO) survey of defense contractors affected by federal budget cuts, a GAO study of the results of the major federal downsizing initiative of the mid-1990's, and a GAO study of 25 private industry and state government downsizing efforts. The studies indicate a widespread usage of voluntary separation incentives as a means for employers to deal with the adverse publicity of a downsizing or plant closing and to allow employees to avoid the stigma of a firing. Typically, a large employer will offer a package of incentive options for the employee to choose from and many of the options do not include a cash payout. In addition, one study indicated that over time employers are reducing the amount of severance benefits. This is the reason the estimate shown above does not grow over time. Finally, it is estimated that at least 20% of taxpayers have incomes above the income limitation in the bill.

The estimated net impact of adding voluntary severance pay and applying a means test to taxpayers is 30% of the $6.1 million cost of the 1996 and 1997 legislation. Due to lack of data this projection is a judgment call.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: August 6, 1998

(Attachment #1

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-8-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Zack Sexton	Speaker's Office
Catherine Davis	ElectriCities of NC, Inc
Alice Garland	ElectriCities
Cam Cova	BPMHL
Jeffrey J Crow	DCR
Robin Stancil Walton	DCR
Carrie Altman	NC Science & Technology
Andy [illegible]	WCSR
AP Dunn	WCSR
Bob Weller	N.C. Telecom Alliance
Katherine Joyce	SEANC
Mark Beason	Capital Group

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-8-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra Swiren	Department of Revenue
Lenice Collins	DOR
Nancy Pomeranz	DOR
Patti Stowell	DOR
Donna Alderman	DOR
Andy Schal	DOR
Willie Riddick	DOR

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Wednesday, July 08, 1998

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

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

S.B. **1300** Insurance Reg. Charge/Company Exams.

Draft Number:	PCS8844
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: None

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Thursday, July 09, 1998

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1242** Wireless Telephone Service/Tower Act

Draft Number:	PCS6856
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill heard before Senate Finance on 7-08-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

Tuesday, July 14, 1998

12 noon - Room 544

SB 873 - Local Government Debt Approval - Sen. Kerr

SB 1263 - Unionville Charter - Sen. Plyler

SB 1552 - Changes to the Notary Public Act - Sen. Kerr

SB 1556 - Amend Education Finance Act - Sen. Rand

HB 1587 - Stanfield/Locust Utility Bills - Rep. Barbee

SENATE FINANCE COMMITTEE

TUESDAY, JULY 14, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, July 14, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 17 committee members present. Senator Kerr introduced the pages: Amy Gordon from Monroe, sponsored by Senator Plyler, and Lauren Nix from Dallas, sponsored by Senator Hoyle.

S.B. 1556 - Amend Education Finance Act.

Senator Rand was recognized to explain his bill and made a motion that a Committee Substitute be adopted for discussion. This motion carried. At the conclusion of Senator Rand's explanation, Senator McDaniel moved for a Favorable Report for the Committee Sub and the motion carried. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

S.B. 1552 - Changes to the Notary Public Act.

Senator Hoyle assumed the chairing of the committee and Senator Kerr was recognized to explain his bill. He moved for the adoption of a Committee Substitute and the motion carried. At the conclusion of his explanation, there were several questions from the committee members regarding this bill. Ms. Pope, Legal Counsel for the Secretary of State's office spoke in support of this bill. On motion by Senator Wellons, the Committee Sub was given a Favorable Report by the committee. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

S.B. 1263 - Unionville Charter.

Senator Plyler explained his bill and Senator McDaniel moved for a Favorable Report. The motion carried. Copy of original Bill and Committee Sub heard by the Committee included in the Minutes.

S.B. 873 - Local Government Debt Approval.

Senator Kerr was recognized to explain his bill and offered a Committee Substitute. On his motion, the Committee Sub was adopted by the Committee. Mr. Bob High with the Department of Revenue spoke in support of this bill. Senator Rand moved for a Favorable Report for the Committee Sub and the motion carried. Copy of original Bill, Committee Sub and Explanation included in the Minutes.

H.B. 1587 - Stanfield/Locust Utility Bills.

Representative Barbee explained his bill and Senator Rand moved for a Favorable Report. The motion carried. Copy of Bill and Explanation included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports are Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1556

Short Title: Amend Education Finance Act. (Public)

Sponsors: Senator Rand.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HIGHER EDUCATIONAL FACILITIES FINANCE ACT TO PROVIDE THAT THE ACT APPLIES TO PRIVATE INSTITUTIONS FOR ELEMENTARY AND SECONDARY EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. This act amends the General Statutes, including Chapter 115E of the General Statutes, Higher Educational Facilities Finance Act, to make the Act apply to private institutions for elementary and secondary education.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1556
Proposed Committee Substitute S1556-PCS3626-LC

Short Title: Amend Education Finance Act. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE HIGHER EDUCATION FACILITIES FINANCE ACT TO PRIVATE ELEMENTARY AND SECONDARY SCHOOL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 115E of the General Statutes reads as rewritten:

"Chapter 115E.

~~Higher~~ Private Educational Facilities Finance Act."

Section 2. G.S. 115E-1 reads as rewritten:

"**§ 115E-1. Short title.**

This Chapter shall be known, and may be cited, as the '~~Higher~~ 'Private Educational Facilities Finance Act.'"

Section 3. G.S. 115E-2 reads as rewritten:

"**§ 115E-2. Legislative findings.**

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions ~~of~~ for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Chapter to provide a measure of assistance and an

alternative method to enable private institutions ~~of~~ for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures ~~which~~ that are needed to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the manner provided herein.

It is hereby further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students."

Section 4. G.S. 115E-3 reads as rewritten:

"§ 115E-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Agency" means the North Carolina Educational Facilities Finance Agency created by this Chapter, or, should said agency be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the agency.

(2) "Cost", as applied to any project or any portion thereof financed under the provisions of this Chapter, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution ~~for higher education~~ for any payments made for any cost described above or the refinancing of any cost

described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred ~~earlier than five years prior to the effective date of this Chapter.~~ before November 25, 1981.

(3) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher ~~education,~~ education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such ~~institution for higher education,~~ an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility ~~which~~ that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(4) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution ~~for higher education~~ or any other lawfully pledged security of a participating ~~institution for higher education.~~ institution.

(4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of

kindergarten, elementary, or secondary education, or any combination thereof.

(5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.

(6) "Participating ~~institution for higher education"~~ institution" means an institution for higher education or an institution for elementary and secondary education that, ~~which,~~ pursuant to the provisions of this Chapter, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Chapter.

(7) "State" means the State of North Carolina."

Section 5. G.S. 115E-5 reads as rewritten:

"§ 115E-5. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating ~~institutions of higher education,~~ institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement agreements;

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency;

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project;

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received therefrom

whether such securities are initially acquired by the agency or a participating ~~institution for higher education,~~ institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources;

(6) To pledge or assign the revenues and receipts from any project and any loan agreement, agreement of sale or lease of the loan repayments, purchase price payments, rent and income received thereunder;

(7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution ~~for higher education~~ for the acquisition of any federally guaranteed securities and to issue revenue refunding bonds;

(8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for such purpose;

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project;

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor;

(11) To conduct studies and surveys respecting the need for projects and their location, financing and construction;

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;

(13) To sue and be sued in its own name, plead and be impleaded;

(14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the agency deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution ~~for higher education~~ to finance or refinance the cost of any project;

(15) To make loans to any participating institution ~~for higher education~~ for the cost of a project in accordance with an agreement between the agency and the participating ~~institution for higher education;~~ institution;

(16) To make loans to a participating institution ~~for higher education~~ to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by such participating institutions ~~for higher education~~ for the cost of a project;

(17) To charge and to apportion among participating institutions ~~for higher education~~ its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Chapter;

(18) To adopt an official seal and alter the same at pleasure; and

(19) To do all other things necessary or convenient to carry out the purposes of this ~~chapter.~~ Chapter."

Section 6. G.S. 115E-6 reads as rewritten:

"§ 115E-6. Criteria and requirements.

In undertaking any project pursuant to this Chapter, the agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the agency as to its compliance with such criteria and requirements shall be final and conclusive:

(1) No project shall be sold or leased nor any loan made to any institution for higher education or any institution for elementary and secondary education ~~which~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities as may be imposed under the agreement of sale or lease or loan agreement;

(2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the project at the expense of the participating ~~institution for higher education;~~ institution;

(3) The public facilities, including utilities, and public services necessary for the project will be made available; and

(4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin."

Section 7. G.S. 115E-7 reads as rewritten:

"§ 115E-7. Procedural requirements.

Any institution for higher education or any institution for elementary and secondary education may submit to the agency, and the agency may consider, a proposal for financing a project using such forms and following such instructions as

may be prescribed by the agency. Such proposal shall set forth the type and location of the project and may include other information and data available to the institution for higher education or the institution for elementary and secondary education respecting the project and the extent to which such project conforms to the criteria and requirements set forth in this Chapter. The agency may request the institution for higher education or the institution for elementary and secondary education to provide additional information and data respecting the project. The agency is authorized to make or cause to be made such investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the institution for higher education or the institution for elementary and secondary education, the extent to which the project otherwise conforms to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter."

Section 8. G.S. 115E-8 reads as rewritten:

"§ 115E-8. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

The agency may sell or lease any project to a participating institution ~~for higher education~~ for operation and maintenance or lend money to any participating institution ~~for higher education~~ in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

(1) The participating institution ~~for higher education~~ shall, at its own expense, operate, repair and maintain the project covered by such agreement;

(2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased thereunder or with respect to which the loan was made;

(3) The participating institution ~~for higher education~~ shall pay all other costs incurred by the agency in connection with the providing of the project covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the agency in connection with the project covered by any such agreement ~~shall be~~ are retired or provision for such retirement ~~shall be~~ is made; and

(5) The obligation of the participating institution ~~for higher education~~ to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution ~~for higher education~~ until the bonds have been retired or provision has been made for such retirement.

~~Where~~ If the agency has acquired a possessory or ownership interest in any project ~~which~~ it has undertaken on behalf of a participating ~~institution for higher education~~ institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in such project to such participating institution ~~for higher education~~ upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project."

Section 9. G.S. 115E-9 reads as rewritten:

"**§ 115E-9. Construction contracts.**

If the agency ~~shall determine~~ determines that the purposes of this ~~chapter~~ Chapter will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution ~~for higher education~~ upon a negotiated basis as determined by the agency. The agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The agency may by written contract engage the services of the participating institution ~~for higher education~~ in the construction of such project and may provide in any such contract that such participating ~~institution for higher education,~~ institution, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described therein, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project directly by such participating ~~institution for higher education,~~ institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the agency. Any such contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution ~~for higher education~~ for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract."

Section 10. G.S. 115E-13(a) reads as rewritten:

"(a) The agency is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section thereof, and to contract with any participating institution ~~for higher education~~ for the use thereof. The agency may require that the participating institution ~~for higher education~~ shall operate, repair or maintain such project and shall bear the cost thereof and other costs of the agency in connection therewith, all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under such agreement or contract."

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

EXPLANATION OF SENATE BILL 1556 (PCS):
Amend Education Finance Act

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 8, 1998
SPONSOR: Senator Rand

This bill would add private institutions for elementary and secondary education to the Educational Facilities Finance Act, which currently covers only private institutions for higher education. An institution for elementary and secondary education is defined as a nonprofit institution providing kindergarten, elementary, or secondary education, or any combination of the three. Under the act, a qualifying institution may obtain tax-exempt financing to acquire, construct, and improve educational facilities. Tax-exempt financing may include revenue bonds issued by the Educational Facilities Finance Agency or other forms of debt, but does not include any financing that would pledge the faith or credit of the State or any political subdivision. The interest rates on tax-exempt financing are significantly lower than on taxable financing. The educational institution must pay for the entire cost of the financing and of the facility being financed.

Tax-exempt financing is available for capital facilities, including parking, that are related to or useful to an educational institution and will be operated to serve and benefit the public.[1] In addition to the building, the financing may cover land acquisition, landscaping, site preparation, furniture, and machinery and equipment, as well as engineering and architectural services and other administrative expenses related to construction or acquisition of a project. Financing is not available under the act for facilities that will be used for sectarian instruction, as a place of religious worship, or in connection with a department of divinity for any religious denomination. Financing is not available for projects that discriminate based on race, creed, color, or national origin.

The Educational Facilities Finance Act is administered by the Educational Facilities Financing Agency, which is located in the Department of State Treasurer. The Agency has seven members: the State Treasurer, the State Auditor, one member appointed upon the recommendation of the President Pro

---

[1] The law specifies the following facilities that may qualify: housing, dining halls and food preparation centers, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, maintenance, storage, and utility facilities, and parking facilities.

Tempore of the Senate, one member appointed upon the recommendation of the Speaker of the House of Representatives, and three members appointed by the Governor. The appointive members must be residents of North Carolina and cannot hold other public office. The Agency is audited annually and submits an annual report to the Governor and the General Assembly.

An institution may qualify for tax-exempt financing only if the Agency finds that it is financially responsible and capable of fulfilling its obligations. Before financing is approved, the Agency must find that the educational institution has provided adequately for the payment of principal and interest on the bonds and for the operation, repair, and maintenance of the facility to be financed.

The Agency may issue bonds only if they are approved by the Local Government Commission. The Local Government Commission sets the interest rates on the bonds and administers their sale. The bonds may be secured by a trust agreement with a corporate trustee, such as a bank. The Agency will require the educational institution to pay fees, loan repayments, rents, or other charges sufficient to cover the payment of principal and interest on the bonds and the operation, repair, and maintenance of the facility to be financed, and the bonds will be secured by the pledge of these revenues.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1556 (PCS3626-LC)
SHORT TITLE: Amend Education Finance Act

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The program would be administered by the Educational Facilities Financing Agency, located in the Department of State Treasurer. The bonds must be approved by the Local Government Commission, which will also set the interest rate on the bonds and administer the sale.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Adds private nonprofit elementary and secondary education institutions to the Education Facilities Finance Act. This would allow a qualifying institution to obtain tax-exempt financing to acquire, construct, and improve educational facilities. Such financing would not include general obligation debt. The institution would be required to pay for the entire cost of the facility and the financing of the facility.

ASSUMPTIONS AND METHODOLOGY: A discussion with the Department of State Treasurer indicated that any additional personnel and other requirements would depend on the volume of activity, which is unknown at this time. For a number of years the Department has been allowed to recover its cost in administering bonds through agency receipts. It is the intention of the Department to fully recover whatever costs are incurred under the new responsibilities.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY: Tom Covington
DATE: July 9, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1552

Short Title: Changes to the Notary Public Act. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING A NOTARY PUBLIC'S STAMP OR SEAL, TO ALLOW EMPLOYEES OF THE NOTARY DIVISION TO ACT AS NOTARIES EX OFFICIO, AND TO IMPOSE A FEE TO BE CERTIFIED AS AN INSTRUCTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary of State shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary of State and consists of not less than three hours nor

more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary of State that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary of State and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The Secretary of State may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a felony or of a crime involving dishonesty or moral turpitude.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

Registers of deeds, assistant and deputy registers of deeds, clerks of court, ~~and~~ assistant and deputy clerks of ~~court~~ court, and the Director and employees of the Notary Division of the Department of the Secretary of State are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.

(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of ~~State.~~ State and by paying a nonrefundable fee of fifty dollars ($50.00)."

Section 3. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed or printed name near the signature, but not contained within the notary's stamp or seal.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 4. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal may contain the expiration date of the notary's commission so long as the expiration date is a part of the stamped or embossed seal and is not handwritten or typed onto the seal. The official stamp or seal, as it appears on any documents shall not be altered by any typed, printed, drawn, or handwritten material. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the Secretary of State."

Section 5. G.S. 10A-15 reads as rewritten:

"**§ 10A-15. ~~Registers of deeds are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) Registers of deeds and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as register of deeds and may certify their notarial acts under the seals of their respective offices.

(b) The Director of the Notary Division of the Department of the Secretary of State, and the employees of that Division, may act as notaries public by virtue of their employment by the Secretary of State and may certify their notarial acts under the seal of the Secretary of State. The Director may charge a fee for a notarial act performed by the Notary Division in accordance with G.S. 10A-10."

Section 6. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ October 1, 1998."

Section 7. This act becomes effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1552
PROPOSED COMMITTEE SUBSTITUTE
THIS IS A DRAFT LINE NUMBERS MAY CHANGE AFTER ADOPTION
14-JUL-98 10:16:42
S1552-CSLA-001

Short Title: Changes to the Notary Public Act. (Public)

Sponsors:

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, AND TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"§ 10A-2. Purposes.

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"§ 10A-3. Definitions.

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the

basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is

personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The Secretary ~~of State~~ may deny an application <u>for commission or recommission as a notary</u> if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

<u>(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.</u>

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.
(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~ Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:
(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the ~~Secretary of State.~~ Secretary.
(2) Have six months of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Purchase the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~ Certification to teach a course of study shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(e) ~~Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~ The following people may be certified to teach a course of study required under subsection (b) without meeting the requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:
(1) Registers of deeds, assistant registers of deeds, and deputy registers of deeds.
(2) Clerks of court, assistant clerks of court, and deputy clerks of court.
(3) The Director and any employee of the Notary Section of the Department of the Secretary of State designated by the Director."

Section 4. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 5. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 6. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 7. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

(b) Registers of deeds and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as register of deeds and may certify their notarial acts under the seals of their respective offices.

(c) The Director, and any employee of the Notary Section of the Department of the Secretary of State designated by the Director, may act as a notary public by virtue of the person's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed."

Section 8. G.S. 10A-15 is repealed.

Section 9. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ July 1, 1998."

Section 10. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n). Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 11. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 12. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).
(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 13. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 34.

"CERTIFICATES OF AUTHENTICATION

"§ 66-270. Authority of Secretary of State to Authenticate Documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the great seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.
(2) Department. -- The Department of the Secretary of State.
(3) Foreign Jurisdiction. -- A jurisdiction outside the State of North Carolina.
(4) Foreign Official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.
(5) Notary public. -- Defined in G.S. 10A-3.
(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.
(7) Secretary. -- The Secretary of State.
(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of Authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. Prerequisites for Authentication.

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. Limitations on Authentication.

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction."

Section 14. Section 9 of this act is effective when it becomes law. Sections 10 and 11 of this act become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

EXPLANATION OF SENATE BILL 1552:
Proposed Committee Substitute
Changes to the Notary Public Act

TO: Senate Finance Committee
FROM: Martha Walston and Cindy Avrette, Committee Counsel
DATE: July 14, 1998
SPONSOR: Senator Kerr

Senate Bill 1552 makes several changes to the Notary Public Act. The proposed committee substitute also makes changes to the law concerning the recordation of maps and it gives the Secretary of State the authority to authenticate documents. The Office of the Secretary of State currently issues certificates of authentication even though it does not have the specific statutory authority to do so.

Sections 1 through 9 contain the changes to the Notary Public Act:

- Section 1 states that one of the purposes of the Notary Public Act is to prevent fraud and perjury.
- Section 2 adds the words "Director" and "Secretary" to the list of terms defined in the Act.
- Section 3 makes four changes to G.S. 10A-4. It provides that the Secretary may deny a notary commission or re-commission to a person who has been convicted of a felony and whose rights have not been restored. The Secretary currently denies an applicant a notary commission if the applicant has been convicted of a felony. Article VI, Sec. 8 of the North Carolina Constitution says that a felon may not hold an office in this State. The Secretary considers a notary an office holder for purposes of this Constitutional provision.
  Second, it imposes a $50 fee for certification and re-certification as a notary instructor. Currently, there is no fee charged for this certification, which lasts for two years. The fee would assist in defraying the costs associated with teaching the instructor's course.
  Third, it exempts the Director of the Notary Section of the Department of the Office of the Secretary of State, and any employee of that Section designated by the Director, from having to have six months of active experience as a notary public and from maintaining a current commission as a notary public to be certified as an instructor.
  Lastly, this section provides that registers of deeds, clerks of courts, and employees of the Notary Division of the Department of the Secretary of State do not have to pay this fee to be certified as an instructor.

- Section 4 clarifies that the notary's name must be clear from either the notary's signature or the notary's typed, printed, or embossed name near the signature. The proposed committee substitute adds "embossed name" and deletes the requirement that the name not be contained within the notary's stamp or seal. As written, this section is clear that the notary's name must be readable to be an attested act. The proposed committee substitute also deletes the requirement that a notary's stamp must be imprinted on a document with black ink. Black ink is preferred because, many of the microfilm and other copying mechanisms used by the Registers of Deeds will only copy black ink. This preference will be made known in the courses taught to notaries.
- Section 5 increases the amount a notary may charge for the notary's services from $2 to $3 per person or signature.
- Section 6 clarifies the law as to the alteration of a notary's seal or stamp. Some stamps and seals contain a blank for a notary to write-in the notary's expiration date. However, an Attorney General's opinion states that this in an impermissible alteration of the notary's seal. This section provides that a stamp or seal may provide for a handwritten expiration date. However, if the expiration date is permanently imprinted on the stamp or seal, it may not be altered. The proposed committee substitute deletes the sentence that "the official stamp or seal, including a permanently imprinted expiration date, shall not be altered by any typed, printed, drawn, or handwritten material."
- Section 7 authorizes the Director of the Notary Section of the Department of the Secretary of State, and any employee of that Section designated by the Director, to act as notaries. These notaries would be notaries by virtue of their employment. They would not need to apply for commissioning, take the course of study, pay the $25 fee, or have a five-year re-commissioning. The section consolidates two statutes that concern notaries ex officio: Registers of Deeds and Clerks of Courts. The section provides that these notaries ex officio may charge for their notary services to the extent allowed under G.S. 10A-10, unless otherwise provided by law. (Clerks of court are allowed to charge $1.00 for a notarial act under G.S. 7A-308.) The fee is payable to the governmental unit or agency by whom the notary is employed.
- Section 8 repeals a statute that is consolidated in Section 7.
- Section 9 expands the curative provision from June 1, 1997, to July 1, 1998.

Sections 10 through 13 contain the changes to the mapping statutes:

- Section 10 requires that maps attached to deeds or other instruments be no larger than 8 ½ by 14. This provision is added so that it is clear that such a map can be recorded in the deed books.

- Maps that are not prepared by a registered land surveyor may be attached to a deed or other instrument for recordation for illustrative purposes if it contains a label that it is not a certified survey and it is no larger than 8 ½ by 14. Section 11 changes the wording of the label to recognize that some maps in this category may be accurate. The new wording also contains language regarding the lack of governmental review to guard against an innocent purchaser believing that because he is given a map that all subdivision and other land use regulations have been satisfied.
- Last session, the General Assembly required certain maps to be reviewed and certified by a plat Review Officer before the maps could be recorded. Section 12 creates some additional exemptions to this requirement: municipal annexation and boundary maps, highway right-of-way and roadway corridor maps, and maps attached to deeds for illustrative purposes under G.S. 47-30(n).

The last section of the bill, Section 13, addresses the Secretary of State's concern that the Department of the Secretary of State needs specific legislative authority to authenticate documents. The Department currently provides this service. A certificate of authentication certifies a document as to the genuineness of an official's signature, seal, or position within the State so that the document can be recognized in a foreign jurisdiction. This certificate is needed in many international adoptions and international business transactions.

Section 9 of the act is effective when it becomes law. Sections 12 and 13 of the act become effective December 1, 1998. The remainder of the act becomes effective September 1, 1998.

EXPLANATION OF SENATE BILL 1552:
Proposed Committee Substitute
Changes to the Notary Public Act

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 30, 1998
SPONSOR: Senator Kerr

Senate Bill 1552 makes several changes to the Notary Public Act. The proposed committee substitute also makes changes to the law concerning the recordation of maps and it gives the Secretary of State the authority to authenticate documents. The Office of the Secretary of State currently issues certificates of authentication even though it does not have the specific statutory authority to do so.

Sections 1 through 9 contain the changes to the Notary Public Act:

- Section 1 states that one of the purposes of the Notary Public Act is to prevent fraud and perjury.
- Section 2 adds the words "Director" and "Secretary" to the list of terms defined in the Act.
- Section 3 does makes four changes G.S. 10A-4. It provides that the Secretary may deny a notary commission or re-commission to a person who has been convicted of a felony. The Secretary currently denies an applicant a notary commission if the applicant has been convicted of a felony. Article VI, Sec. 8 of the North Carolina Constitution says that a felon may not hold an office in this State. The Secretary considers a notary an office holder for purposes of this Constitutional provision.

  Second, it imposes a $50 fee for certification and re-certification as a notary instructor. Currently, there is no fee charged for this certification, which lasts for two years. The fee would assist in defraying the costs associated with teaching the instructor's course.

  Third, it exempts the Director of the Notary Section of the Department of the Office of the Secretary of State, and any employee of that Section designated by the Director, from having to have six months of active experience as a notary public and from maintaining a current commission as a notary public to be certified as an instructor.

  Lastly, this section provides that registers of deeds, clerks of courts, and employees of the Notary Division of the Department of the Secretary of State do not have to pay this fee to be certified as an instructor.

- Section 4 clarifies that the notary's name must be clear from either the notary's signature or the notary's typed or printed name near the signature line. The notary's name, as it appears on the seal or stamp, is not sufficient. In many instances, the notary's name from the seal becomes unreadable over time. A typed or printed name remains readable indefinitely. The section also specifies that a notary's stamp must be imprinted on a document with black ink. Many of the microfilm and other copying mechanisms used by the Registers of Deeds will only copy black ink.
- Section 5 increases the amount a notary may charge for the notary's services from $2 to $3 per person or signature.
- Section 6 clarifies the law as to the alteration of a notary's seal or stamp. Some stamps and seals contain a blank for a notary to write-in the notary's expiration date. However, an Attorney General's opinion states that this in an impermissible alteration of the notary's seal. This section provides that a stamp or seal may provide for a handwritten expiration date. However, if the expiration date is permanently imprinted on the stamp or seal, it may not be altered.
- Section 7 authorizes the Director of the Notary Section of the Department of the Secretary of State, and any employee of that Section designated by the Director, to act as notaries. These notaries would be notaries by virtue of their employment. They would not need to apply for commissioning, take the course of study, pay the $25 fee, or have a five-year re-commissioning. The section consolidates two statutes that concern notaries ex officio: Registers of Deeds and Clerks of Courts. The section provides that these notaries ex officio may charge for their notary services to the extent allowed under G.S. 10A-10. The fee is payable to the governmental unit or agency by whom the notary is employed.
- Section 8 repeals a statute that is consolidated in Section 7.
- Section 9 expands the curative provision from June 1, 1997, to July 1, 1998.

Sections 10 through 14 contain the changes to the mapping statutes:

- Sections 10 and 11 exempt plats of easements to an electric membership corporation, an electric power company, a gas company, a telephone company, and a cable television company from the mapping requirements of G.S. 47-30 and from certification by a review officer. These maps of transmission easements are prepared by surveyors, but there appears to be no reason to require them to meet all of the detailed requirements of G.S. 47-30.
- Section 12 requires that maps attached to deeds or other instruments be no larger than 8 ½ by 14. This provision is added so that it is clear that such a map can be recorded in the deed books.

- Maps that are not prepared by a registered land surveyor may be attached to a deed or other instrument for recordation for illustrative purposes if it contains a label that it is not a certified survey and it is no larger than 8 ½ by 14. Section 13 changes the wording of the label to recognize that some maps in this category may be accurate. The new wording also contains language regarding the lack of governmental review to guard against an innocent purchaser believing that because he is given a map that all subdivision and other land use regulations have been satisfied.
- Last session, the General Assembly required certain maps to be reviewed and certified by a plat Review Officer before the maps could be recorded. Section 14 creates some additional exemptions to this requirement: municipal annexation and boundary maps, highway right-of-way and roadway corridor maps, and maps attached to deeds for illustrative purposes under G.S. 47-30(n).

The last section of the bill, Section 15, addresses the Secretary of State's concern that the Department of the Secretary of State needs specific legislative authority to authenticate documents. The Department currently provides this service. A certificate of authentication certifies a document as to the genuineness of an official's signature, seal, or position within the State so that the document can be recognized in a foreign jurisdiction. This certificate is needed in many international adoptions and international business transactions.

The fee for being certified and re-certified as a notary instructor becomes effective August 1, 1998. The remainder of the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1552

SHORT TITLE: Changes to the Notary Public Act

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$2,900	$3,050	$3,200	$3,350	$3,500
EXPENDITURES					
POSITIONS: NA					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY:

Amends G.S. 10A-2 to specify that one of the chapter's purposes is to prevent fraud and forgery. Amends G.S. 10A-4 to require payment of a $50 fee to be certified to teach a course of study for notaries public, and to renew certification. Adds director and employees of the Notary Division of the Department of the Secretary of State to existing exemption from certain instructor certification requirements. Amends G.S. 10A-15 to permit director and employees of the Notary Division to act as notaries public by virtue of their employment by the Secretary of State, and to allow them to certify their notarial acts under the Secretary of State's seal. Amends G.S. 10A-4 (c) to specify that the Secretary of State may deny an application for commission or recommission as a notary if applicant has been convicted of a felony. Amends G.S. 10A-11 to add to and clarify specifications for notary seals. Amends G.S. 10A-16 to validate various notarial acts performed before October 1, 1998, and to clarify and add to the acts that are covered by the validation.

ASSUMPTIONS AND METHODOLOGY:
The number of initial certifications to teach a course of study for notaries public and the certification renewals to teach the courses are represented below by the single figures for the 1993-94 through the 1997-98 (projected) fiscal years:

1993-94	1994-95	1995-96	1996-97	1997-98 (est.)
43	47	50	52	55

Senate Bill 1552 authorizes the Secretary of State to charge a $50 fee for each initial certification and renewal to teach a course of study for notaries public. Relying on the experience from 1993-94 to 1996-97, we estimate an average annual increase of 3 individuals to the total number of individuals receiving initial certification and/or certification renewal. The following numbers (by fiscal year) represent the projected number of certifications and renewals in the out years:

1998-99	1999-00	2000-01	2001-02	2002-03
58	61	64	67	70

We simply multiply the projected numbers of initial certificates and renewals (above) times the $50 fee (authorized by the bill) to get the revenue projections by fiscal year reflected in the **FISCAL IMPACT** section of this note.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY: Tom Covington

DATE: June 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1263

Short Title: Blank Appropriations Bill-1. (Public)

Sponsors: Senator Plyler.

Referred to: Rules and Operations of the Senate.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1263
Proposed Committee Substitute S1263-PCS9767-LB1

Short Title: Unionville Charter Revived. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO REVIVE THE CHARTER OF THE TOWN OF UNIONVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 3. That the elected officers of said town shall consist of a ~~mayor,~~ mayor and five commissioners, ~~a constable, a secretary and treasurer,~~ and the ~~following persons~~ General Assembly shall fill the offices until the regular election in ~~May, one thousand nine hundred and eleven, viz: Mayor, J. B. Little; commissioners, A. A. Secrest, T. L. A. Helms, J. T. Price, Dr. A. D. N. Whitley and C. D. Benton, all of which offices shall be filled by election of popular vote, except constable, secretary and treasurer, who shall be chosen by commissioners of said town. The constable and treasurer shall give bond in such sum as the commissioners shall determine for the faithful performance of the duties of their respective offices.~~ November of 1999."

Section 2. Section 4 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 4. That officers and their successors shall be elected under ~~the laws of chapter seventy-three of The Revisal of one thousand nine hundred and five, relating to elections,~~ Chapter 160A and Chapter 163 of the General Statutes and shall hold their offices for ~~the~~ four-year terms prescribed under the general law."

Section 3. Sections 5 and 6 of Chapter 62 of the Private Laws of 1911 are repealed.

Section 4. Section 7 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 7. Said commissioners shall have and are hereby vested with all the powers conferred upon commissioners of towns and cities and subject to the performance of all the duties as such, conferred under the general laws. ~~laws of chapter seventy-three of The Revisal of one thousand nine hundred five.~~"

Section 5. Chapter 62 of the Private Laws of 1911 is amended by adding a new section to read:

Section 5.1. The Town of Unionville operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

Section 6. (a) From and after the effective date of this act, the citizens and property in the Town of Unionville shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 7. On the date of the general election in 1998, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Chapter 62 of the Private Laws of 1911, the question of whether or not the charter of the Town shall be revived.

Section 8. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Revival of the Charter of the Town of Unionville".

Section 9. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Unionville", Sections 1 through 6 of this act become effective on the date that the Union County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 6 of this act have no force and effect.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1263
Proposed Committee Substitute S1263-PCS9767-LB1

Short Title: Unionville Charter Revived. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO REVIVE THE CHARTER OF THE TOWN OF UNIONVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 3. That the elected officers of said town shall consist of a ~~mayor,~~ mayor and five commissioners, ~~a constable, a secretary and treasurer,~~ and the ~~following persons~~ General Assembly shall fill the offices until the regular election in ~~May, one thousand nine hundred and eleven, viz: Mayor, J. B. Little; commissioners, A. A. Secrest, T. L. A. Helms, J. T. Price, Dr. A. D. N. Whitley and C. D. Benton, all of which offices shall be filled by election of popular vote, except constable, secretary and treasurer, who shall be chosen by commissioners of said town. The constable and treasurer shall give bond in such sum as the commissioners shall determine for the faithful performance of the duties of their respective offices.~~ November of 1999."

Section 2. Section 4 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 4. That officers and their successors shall be elected under ~~the laws of chapter seventy-three of The Revisal of one thousand nine hundred and five, relating to elections,~~ Chapter 160A and Chapter 163 of the General Statutes and shall hold their offices for ~~the~~ four-year terms prescribed under the general law."

Section 3. Sections 5 and 6 of Chapter 62 of the Private Laws of 1911 are repealed.

Section 4. Section 7 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 7. Said commissioners shall have and are hereby vested with all the powers conferred upon commissioners of towns and cities and subject to the performance of all the duties as such, conferred under the general laws. ~~laws of chapter seventy-three of The Revisal of one thousand nine hundred five.~~"

Section 5. Chapter 62 of the Private Laws of 1911 is amended by adding a new section to read:

Section 5.1. The Town of Unionville operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

Section 6. (a) From and after the effective date of this act, the citizens and property in the Town of Unionville shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 7. On the date of the general election in 1998, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Chapter 62 of the Private Laws of 1911, the question of whether or not the charter of the Town shall be revived.

Section 8. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Revival of the Charter of the Town of Unionville".

Section 9. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Unionville", Sections 1 through 6 of this act become effective on the date that the Union County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 6 of this act have no force and effect.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 873

Short Title: Tax Law Changes. (Public)

Sponsors: Senator Kerr.

Referred to: Rules and Operations of the Senate.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 873
Proposed Committee Substitute S873-PCS6857-LC

Short Title: Local Government Debt Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"ARTICLE 8.

"Financing ~~Agreements.~~ Agreements and Other Financing Arrangements."

Section 2. Article 8 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-153. Approval of other financing arrangements.**

(a) Commission Approval Required. -- Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.

(2) Enter into any similar type of financing arrangement.

(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(b) Exceptions. -- Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.

(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(a).

(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. -- No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. -- The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.

(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.

(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.

(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.

(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. -- To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. -- If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

Section 3. This act is effective when it becomes law and applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after that date.

EXPLANATION OF SENATE BILL 873 (PCS):
Local Government Debt Approval

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 13, 1998
SPONSOR: Senator Kerr

Senate Bill 873 extends the requirement of Local Government Commission approval to certain local government debt not now subject to approval by the Local Government Commission (LGC). The LGC would be required to approve the debt if it found that the amount is not excessive, that the entity operating the project and the entity issuing, securing, or incurring the debt demonstrate financial responsibility, and that the proposed date and manner of sale will not have an adverse affect on any other anticipated sale of State or local obligations. The bill applies to the few types of debt that are not now generally subject to LGC approval, but does not apply to debt that, because of its small size or other similar characteristics, is specifically exempted from LGC approval under current law.

Virtually all bonds, installment purchase contracts, and other debt arrangements that local governments may enter into must be approved by the Local Government Commission. The LGC was created in the early 1930s in response to local government bond defaults resulting from the depression. The LGC provides assistance and oversight to assure that proposed financings are fully understood by the local officials and are fiscally sound. In evaluating proposed projects, the LGC considers whether the operator of the project and the unit obligating itself for the debt can demonstrate the financial capability to fulfill their obligations. In general, the LGC is required to approve proposed debt if all of the following conditions are met:[1]

1. The debt is necessary or expedient.
2. The amount is adequate and not excessive.
3. The local government has good debt management practices.
4. In the case of general obligation debt and installment purchase contracts, that an excessive increase in taxes will not be required. In the case of revenue bonds, that the project that will generate revenues to pay the debt is feasible.
5. That the proposed debt can be marketed at reasonable interest costs.

---

[1] G.S. 159-52, 159-86, 159-151.

There are a two types of debt for which Local Government Commission approval is not specifically required: local housing debt and debt issued by a nonprofit corporation on behalf of a local government. As explained below, these are not specific exceptions to the approval requirement enacted by the General Assembly. Instead, they are situations that have evolved independently and do not reflect a policy judgment by the General Assembly that LGC approval should not be required.

These situations represent loopholes enabling local units to issue debt that the LGC considers unsound. The standards for LGC approval are not unduly strict. Failure to obtain LGC approval may be due to a lack of security for the debt. If a local government uses one of these loopholes to issue less secure debt without LGC approval, the resulting risks of default will have a negative effect on the bond ratings or the debt interest cost of all local governments in North Carolina.

Local Housing Debt. Local Government Commission approval is not required for debt of local housing authorities or of local governments exercising the powers of local housing authorities. Chapter 157 of the General Statutes authorizes the creation of local housing authorities. This law, enacted in 1935, is apparently based on a model act. The law was originally enacted to enable local housing authorities to act as conduits for federal housing funds. The authority issued the bonds for housing projects it owned and operated. Housing subsidy payments by the federal government to the authority effectively provided federal government backing for the bonds. For these reasons, a LGC approval requirement was not added to the law. In the late 1980s, however, the situation changed. First, local housing authorities were granted expanded authority to provide low-income and moderate income-housing.[2] Then, the federal funds that supported housing projects were phased out. In search of a new mission, some local housing authorities have looked to issuing tax-exempt bonds for private developers. Without the backing of the federal government and without any requirement for Local Government Commission approval, some of these bonds may not be as secure as other North Carolina local bonds.

The housing bond problem is compounded by the fact that G.S. 160A-456 and G.S. 153A-376 grant counties, cities, and towns the authority to exercise the statutory powers of local housing authorities. Under general law, a county or city can finance housing with bonds or installment purchase contracts, subject to approval by the Local Government Commission. If its proposed project is too risky to be approved, however, it can issue the bonds through the authority granted to local housing authorities under Chapter 157 of the General Statutes. This loophole creates the potential for a local government bond default.

---

[2] Chapter 464 of the 1987 Session Laws.

Nonprofit Corporate Agent Debt. The other type of local debt for which Local Government Commission approval is not required is debt issued on behalf of a local government by a nonprofit corporation. The Internal Revenue Service ruled in 1963[3] that bonds issued by such a nonprofit corporation may be tax-exempt if the income and property of the corporation will revert to the local government, and certain other requirements for tax exemption are satisfied. The debt issued is not the debt of the local government but of the nonprofit corporation. Some bond attorneys believe that, as an agency of the local government, the nonprofit corporation must comply with the restrictions, such as LGC approval, that apply to the government. Other bond attorneys, however, take the view that the nonprofit corporation is subject only to the rules applicable generally to nonprofit corporations under Chapter 55A of the General Statutes and need not seek LGC approval before issuing debt. Thus, if the LGC turns down a proposed local government financing because it is too risky, the local government can use a nonprofit corporation to go ahead with the debt. These nonprofit corporations are generally given names that make them sound like government or quasi-government agencies, such as "City of X Financing Assistance Corporation." As a result, although any default would technically be by the corporation and not the local government, in the marketplace, the default is likely to be considered a default by a local government unit. This perception will damage the reputation of North Carolina local governments in general.

Exceptions to Approval Requirement. Except in the cases noted above, all local government bonds are subject to approval by the Local Government Commission. The current law[4] provides an exemption from the LGC approval requirement, however, for non-bond debt in specific situations. This bill will not affect those exemptions. These exemptions are:

1. Obligations for a period of less than five years.
2. Debts that are less than $500,000 or 1/10 of 1% of the local unit's property tax base, whichever is less.
3. Contracts between a unit of local government and the State or the United States, entered into as a condition of a grant or loan to the local unit.
4. Financing of motor vehicles or voting machines.

---

[3] Rev. Ruling 63-20.

[4] G.S. 159-148. Although G.S. 159-148 also exempts financing from the Solid Waste Management Loan Program in Chapter 159I of the General Statutes, these agreements are subject to LGC approval under G.S. 159I-12.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1587

Short Title: Stanfield/Locust Utility Bills. (Local)

Sponsors: Representatives Barbee and Hightower.

Referred to: Local and Regional Government II, if favorable, Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF STANFIELD AND THE CITY OF LOCUST TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE THE TOWN AND THE CITY.

Section 1. Section 2 of Chapter 1070 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~Town~~ Towns of Richfield and Stanfield and the City of Locust only."

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

EXPLANATION OF HOUSE BILL 1587:
Stanfield/Locust Utility Bills

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 13, 1998
SPONSOR: Representatives Barbee and Hightower

House Bill 1587 allows the Town of Stanfield and the City of Locust to collect utility bills as if they were taxes due. The bill would allow these municipalities to collect in this manner for water supply or distribution or sewage collection or disposal provided by the municipality when the person responsible for the bill fails to pay for more than 60 days after the bill becomes delinquent. The municipality could collect the delinquent amount through the use of levy on the person's tangible personal property under G.S. 105-366 and G.S. 105-367. G.S. 105-366 gives the tax collector authority to levy on the delinquent person's personal property. G.S. 105-367 provides that the tax collector shall conduct the sale of the personal property, unless the governing body of the taxing unit authorizes the tax collector to direct the sheriff to execute on the property and conduct the sale.

Pursuant to Chapter 1070 of the 1989 Session Laws, the Town of Richfield has the authority to collect utility bills by levying on the delinquent person's personal property House Bill 1587 adds the Town of Stanfield and the City of Locust to this Session Law. Richfield, Stanfield, and Locust are all located in Stanly County. House Bill 1587 passed second and third reading in the House on July 6.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 14, 1998**

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	WCSR
C. Parker	Bone & Assoc.
Bernard Allen	SOS
Michael S. Fox	SOS
Martha Glass	DOA
Heather Smith	OSA
Stuart Dixon	NCNG
Bill McAuley	PSNC
Ed Regan	N.C. Assoc. of Co. Comm.
Alice Garland	Electricities
VL McBride	NCDA
Everlyn Hammond	VAN-CH

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 14, 1998**

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	CP&L
David Simmons	ZDA, PD
John Bowdish	Zoo Alley P.A.
[signature]	NCAFI
Bill Scoggin	NC BAR ASSOC.
[signature]	aVCAG
[signature]	AT&T
Amy Jo Bain	Smith Anderson
Natalie Haskins	Charlotte Chamber
Michelle Cook	Weyerhaeuser
Janice Burke	Dept. of State Treasurer

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 14, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hall	Dept of State Treas,
Andy Romanet	N.C. League of Municipalities
Ron Mummy	Sen. to Rep. Barker
Mike Gleason	Capitol Group
Paul Zigas	OSBM
Jay W. Tharp	OSPL
William Riddick	DOR
Patti Seawell	"
Celeste Clinton	Sen. Cooper
Roger	NCDOT
Roger Bone	Bone & Assoc.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

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

Tuesday, July 14, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1587** Stanfield/Locust Utility Bills.
Sequential Referral: None
Recommended Referral: None

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

S.B. **873** Tax Law Changes.
Draft Number: PCS6857
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1556** Amend Education Finance Act.
Draft Number: PCS3626
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: July 14 SB 873 1556 HB 1587

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, July 15, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

S.B. `**1263** Blank Appropriations Bill-1.

Draft Number:	PCS9767
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1552** Changes to the Notary Public Act.

Draft Number:	PCS8845
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: July 14 SB 1263 1552

AGENDA

SENATE FINANCE COMMITTEE MEETING
WEDNESDAY, JULY 15, 1998

ROOM 544 - 12:00 NOON

OPENING OF MEETING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- SB 186 - Delay Gaston Property Tax - Senator Foxx
- SB 396 - Downtown Development Zone Improvement - Sen. L. Shaw
- SB 1241 - Amendments to Revenue Laws - Senator Hoyle
- HB 794 - Engineering & Land Surveyors Change - Rep. Ives
- HB 1611 - Carteret-Craven Boundary - Rep. Wainwright

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 15, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, July 15, 1998 at 12:00 Noon in Room 544 LOB. There were 26 members of the Committee present. Senator John Kerr, Co-chairman, called the meeting to order and introduced the Pages, they are: Scott Ashworth from Cary, North Carolina and Jason Snead from Raleigh, North Carolina, both sponsored by Senator John Carrington and Blair Eakes from Cherryville, North Carolina, sponsored by Senator David Hoyle.

H. B. 1611 - Carteret-Craven Boundary

Representative Wainwright came to explain the bill. Senator Howard Lee moved for a "favorable" report, motion passed. (Copy of Bill included in Minutes).

S. B. 186 - Delay Gaston Property Tax

Senator David Hoyle came to explain the bill and to state that the bill was before the committee for "concurrence". After some questions from the committee members, Senator Mark McDaniel moved for "favorable as to concurrence", motion passed. (Copy of Bill is included in Minutes).

S. B. 1241 - Amendments to Revenue Laws

Senator David Hoyle came to explain the bill. He called on Cindy Avrette, Staff Counsel to the Committee, to explain the bill. Senator Hoyle moved that proposed committee substitute be adopted for discussion, motion passed. Senator John Blust sent forth an amendment to the bill. He asked Martha Harris, Staff Counsel to Committee, to read the amendment, which she did. Senator Kerr called on Sabre Faires with Department of Revenue to speak on the amendment. Senator Hoyle asked at this point that the bill, pcs and amendment be pulled back from discussion. Bill was pulled from today's Agenda. (Copy of Bill, Proposed Committee Substitute, Explanation of PCS and a letter from Mr. James B. Blackburn, III, General Counsel for North Carolina Association of County Commissioners objecting to Senator Blust's amendment are included in the Minutes).

S. B. 396 - Downtown Development Zone Improvement

Senator Larry Shaw came to explain the Bill. Senator Larry Shaw sent forth an amendment to this bill and moved that amendment be adopted, motion passed. There were numerous questions from members of the committee. Senator Howard Lee moved

for a "favorable" report. No vote was taken since Senator Kerr pulled the bill from the Agenda so that the questions from members of the committee could be addressed. The Bill will be taken up at a later meeting. (Copy of Bill, Explanation, Fiscal Note and Amendment by Senator Larry Shaw are included in the Minutes).

H. B. 794 - Engineering & Land Surveyors Change

Representative Ives came to explain the Bill. Senator Howard Lee moved for adoption of proposed committee substitute for discussion, motion passed. After a few questions, Senator Howard Lee moved for a "favorable" report, motion passed. (Copy of Bill, Committee Substitute, Explanation and Fiscal Note are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report dated 7-15-98 is Attachment #2
Committee Report dated 7-20-98 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1611*

Short Title: Carteret-Craven Boundary Clarification. (Local)

Sponsors: Representatives Wainwright; Nichols, Preston, and Smith.

Referred to: Ways and Means, if favorable, Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PART OF THE CARTERET/CRAVEN COUNTY BOUNDARY MODIFIED BY CHAPTER 207 OF THE 1993 SESSION LAWS NOW THAT THE SURVEY REQUIRED BY THAT ACT HAS BEEN MADE.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 207 of the 1993 Session Laws reads as rewritten:

"Sec. 6. The portion of the boundary between Carteret and Craven Counties affected by this act ~~shall be~~ has been surveyed and mapped by Carteret and Craven Counties in accordance with G.S. 153A-18. Such action ~~shall be~~ was completed by ~~March 31, 1994.~~ survey dated May 16, 1994. The corrected metes and bounds description produced by that survey is set out in Section 1 of this act."

Section 2. Section 1 of Chapter 207 of the 1993 Session Laws reads as rewritten:

"Section 1. A portion of the common dividing line between Carteret County, North Carolina, and Craven County, North Carolina, shall be as follows:

Beginning at a point in Hunters Creek which divides Carteret and Jones Counties, ~~which point is identified and labeled "A" on a map of the Carteret-Craven Boundary dated May 28, 1992, a copy of which shall be filed with the Registers of Deeds in Carteret County and Craven County. The Registers of Deeds shall accept such document for filing in the form presented by the Counties. All N. C. State Plane Grid Coordinates used in the map are based on the North American Datum of 1927 and are in units of U. S. Survey Feet. The said point of beginning bears N. C. State Plane Grid Coordinates (N=391,810+- and E=2,576,800+-).~~

~~Thence from the said point of beginning in an easterly direction to Point "B" on said map (N=391,570+- and E=2,610,400+-); thence continuing in an easterly direction to Point "C" on said map (N=391,720+- and E=2,613,870+-); thence in a northerly direction to point "D" on said map (N=397,390+- and E=2,613,655+-); thence in an easterly direction to a point in the centerline of US Highway 70 labeled "E" on said map (N=401,920+- and E=2,635,465+-); thence along and with the centerline of US Highway 70 in a northerly direction to a point in the existing Carteret-Craven Boundary which is labeled as point "F" on said map (N=405,150+- and E=2,635,115+-); thence in an easterly direction along the existing Carteret-Craven Boundary to point "G" on said map (N=406,575+- and E=2,668,380+-); thence in a northeasterly direction to point "H" on said map (N=407,705+- and E=2,670,270+-); thence in a southeasterly direction to point "I" on said map (N=407,047+- and E=2,670,727+-); thence in an easterly direction to point "J" on said map (N=407,185+- and E=2,671,255+-); thence in a southeasterly direction to point "K" on said map (N=406,612+- and E=2,671,681+-); thence in a northeasterly direction to point "L" on said map (N=406,745+- and E=2,671,860+-); thence in a Northeasterly direction to point "M" on said map (N=406,800+- and E=2,671,940+-); thence in an easterly direction to point "N" on said map (N=406,915+- and E=2,672,390+-); thence in a southerly direction to point "O" on said map, the centerline of SR 1392 (Adam's Creek Road) (N=406,510+- and E=2,672,520+-); thence in an easterly direction to point "P" on said map (N=407,015+- and E=2,673,375+-); thence in an easterly direction to point "Q" on said map (N=407,145+- and E=2,673,730+-); thence in an easterly direction to point "R" on said map (N=407,268+- and E=2,674,135+-); thence in a northwesterly direction to point "S" on said map (N=407,460+- and E=2,674,095+-); thence along and with the existing county line to Point "T" on said map (N=415,370+- and E=2,691,805+-); thence in a northerly direction to point "U" on said map (N=415,450+- and E=2,691,775+-); thence in an easterly direction to point "V" on said map (N=415,660+- and E=2,691,947+-); thence in an easterly direction to a point in the Atlantic Intracoastal Waterway (Adam's Creek Canal) which point is labeled point "W" on said map (N=415,655+- and E=2,692,170+-), thence with the centerline of the Atlantic Intracoastal Waterway in a north-northeasterly direction to point "X", which point "X" is a point in the existing Carteret-Craven County boundary line (N=431,130+- and E=2,701,070+-).~~ said point being designated and shown as point 'A' on a plat consisting of six sheets entitled: 'Survey of: Carteret/Craven County line'; dated: May 16, 1994; as surveyed by: Alan Bell Surveying; said plat to be filed with the Register of Deeds in Carteret County and Craven County. All coordinates on said plat and shown herein are based on the North Carolina grid coordinate system using North American Datum of 1983 and are in units of U.S. survey feet. The said point of Beginning having coordinates of: (N:391,847.3104, E:2,576,786.9073). Thence from the above described point of Beginning South 89 degrees 39 minutes 12 seconds East 21.53 feet to a new county line monument shown as point 'B' on said plat; point 'B' having coordinates of: (N:391,847.1837, E:2,576,808.4425); thence continuing a straight line South 89

degrees 39 minutes 12 seconds East 997.38 feet to a new county line monument shown as point 'C' on said plat; point 'C' having coordinates of: (N:391,841.1479, E:2,577,805.7996); thence continuing a straight line South 89 degrees 39 minutes 12 seconds East 2511.47 feet to an old existing iron pipe and being shown as point 'D' on said plat; point 'D' having coordinates of: (N:391,825.9582, E: 2,580,317.2197); thence continuing a straight line South 89 degrees 39 minutes 12 seconds East 30,173.66 feet to a new United States Forest Service standard aluminum iron pipe with cap and being shown as point 'E' on said plat; point 'E' having coordinates of: (N:391,643.4326, E:2,610,490.3270); thence North 87 degrees 56 minutes 36 seconds East 3,475.67 feet to an existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'F' on said plat; point 'F' having coordinates of: (N:391,769.1747, E:2,613,963.7189): thence North 02 degrees 12 minutes 25 seconds West 5,620.49 feet to another existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'G' on said plat; point 'G' having coordinates of: (N:397,385.4946, E: 2,613,747.2760); thence North 77 degrees 16 minutes 50 seconds East 2.966.14 feet to another existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'H' on said plat; point 'H' having coordinates of: (N:398,038.5684, E:2,616,640.6238); thence continuing a straight line North 77 degrees 16 minutes 50 seconds East 19,149.46 feet to a new county line monument in the western margin of U.S. Highway 70 and shown as point 'I' on said plat; point 'I' having coordinates of: (N:402,254.8311, E:2,635,320.1591); thence continuing a straight line North 77 degrees 16 minutes 50 seconds East 112.10 feet to a new county line monument in the physical centerline of U.S. Highway 70 and shown as point 'J' on said plat; point 'J' having coordinates of: (N:402,279.5126, E: 2,635,429.5072); thence along the physical centerline of U.S. Highway 70 in a northerly direction the following: North 13 degrees 47 minutes 04 seconds West 224.53 feet to a point; thence North 05 degrees 07 minutes 44 seconds West 197.66 feet to a point; thence North 00 degrees 34 minutes 26 seconds West 184.83 feet to a point; thence North 00 degrees 26 minutes 22 seconds East 1,123.19 feet to a point; thence North 02 degrees 36 minutes 55 seconds West 177.28 feet to a point; thence North 06 degrees 01 minutes 19 seconds West 181.59 feet to a point; thence North 10 degrees 08 minutes 08 seconds West 217.14 feet to a point; thence North 14 degrees 24 minutes 47 seconds West 211.20 feet to a point; thence North 18 degrees 00 minutes 25 seconds West 220.65 feet to a new P-K nail in the center of a crossover; thence North 23 degrees 27 minutes 32 seconds West 288.49 feet to a new county line monument in the physical centerline of U.S. Highway 70 and shown as point 'K' on said plat; point 'K' having coordinates of: (N: 405,252.8869, E: 2,635,064.1234); thence leaving the physical centerline of U.S. Highway 70 North 87 degrees 38 minutes 04 seconds East 133.59 feet to a new county line monument in the eastern margin of U.S. Highway 70 and shown as point 'L' on said plat; point 'L' having coordinates of: (N: 405,258.4009, E: 2,635,197.5966); thence continuing a straight line North 87 degrees 38 minutes 04 seconds East 33,306.69 feet to a new county line monument shown as point 'M' on said plat; point 'M' having coordinates of: (N: 406,633.1803, E: 2,668,475.8998); thence North 63 degrees 00 minutes 03 seconds East

1,776.83 feet to a new county line monument shown as point 'N' on said plat; point 'N' having coordinates of: (N: 407,439.8189, E: 2,670,059.0787); thence South 67 degrees 55 minutes 28 seconds East 541.78 feet to a new county line monument shown as point 'O' on said plat; point 'O' having coordinates of: (N: 407,123.4556, E: 2,670,839.1458); thence North 74 degrees 30 minutes 48 seconds East 526.87 feet to a new county line monument shown as point 'P' on said plat; point 'P' having coordinates of: (N: 407,263.8717, E: 2,671,345.9257); thence South 35 degrees 54 minutes 44 seconds East 716.23 feet to a new county line monument shown as point 'Q' as said plat; point 'Q' having coordinates of (N: 406,683.7859, E: 2,671,766.0284); thence North 53 degrees 52 minutes 28 seconds East 230.24 feet to a new county line monument in the western right of way line of N.C. Highway 101 (100' R/W) and shown as point 'R' on said plat; point 'R' having coordinates of: (N: 406,819.5269, E: 2,671,952.0005); thence North 54 degrees 09 minutes 48 seconds East 99.99 feet to a new county line monument in the eastern right of way line of said N.C. Highway 101 and shown as point 'S' on said plat; point 'S' having coordinates of: (N: 406,878.0698, E: 2, 672,033.0627); thence North 75 degrees 44 minutes 21 seconds East 455.96 feet to a new county line monument shown as point 'T' on said plat; point 'T' having coordinates of: (N: 406,990.3881, E: 2,672,474.9684); thence South 17 degrees 49 minutes 46 seconds East 396.38 feet to a new county line monument in the northern right of way line of N.C. S.R. 1392 (60' R/W) and shown as point 'U' on said plat; point 'U' having coordinates of: (N: 406,613.0434, E: 2,672,596.3341); thence continuing a straight line south 17 degrees 49 minutes 46 seconds East 30.70 feet to an existing P-K nail in the centerline of N.C.S.R. 1392 and shown as point 'V' on said plat; point "V" having coordinates of: (N:406,583.8140, E:2,672,605.7352); thence North 58 degrees 59 minutes 03 seconds East 991.68 feet to a new county line monument in the eastern right of way line of N.C.S.R. 1391 (60'R/W) and shown as point 'W' on said plat; point 'W' having coordinates of: (N:407,094.8029, E:2,673,455.6318); thence North 74 degrees 30 minutes 32 seconds East 379.91 feet to a new county line monument shown as point 'X' on said plat; point 'X' having coordinates of: (N:407,196.2733, E:2,673,821.7438); thence North 76 degrees 56 minutes 33 seconds East 436.34 feet to a new county line monument shown as point 'Y' on said plat; point 'Y' having coordinates of: (N:407,294.8660, E:2,674,246.8052); thence North 25 degrees 06 minutes 38 seconds West 94.95 feet to a new county line monument shown as point 'Z' on said plat; point 'Z' having coordinates of: (N:407,380.8365, E:2,674,206.5097); thence North 65 degrees 43 minutes 56 seconds East 19,415.25 feet to a new county line monument shown as point 'AA' on said plat; point 'AA' having coordinates of: (N:415,360.5431, E:2,691,906.1190); thence North 05 degrees 58 minutes 05 seconds West 301.43 feet to a new county line monument shown as point 'BB' on said plat; point 'BB' having coordinates of: (N:415,660.3399, E:2,691,874.7779); thence North 05 degrees 33 minutes 22 seconds West 363.55 feet to a new county line monument shown as point 'CC' on said plat; point 'CC' having coordinates of: (N:416,022.1791, E:2,691,839.5793); thence North 85 degrees 18 minutes 11 seconds East 152.07 feet to a new county line monument shown as point 'DD' on said plat; point 'DD' coordinates of: (N:416,034.6314, E:2,691,991.1385);

thence continuing a straight line North 85 degrees 18 minutes 11 seconds East 250.00 feet to the centerline of the Atlantic Intracoastal Waterway (Adams Creek Canal); thence along the centerline of the Atlantic Intracoastal Waterway in a northerly direction to a point in the existing Carteret and Craven County line shown as point 'FF' on said plat; point 'FF' having coordinates of: (N:431,099+-, E:2,700,639+-). All bearings are relative to N.C. grid North (NAD 1983). All measurements are grid distances."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 186
House Committee Substitute Favorable 6/3/98

Short Title: Delay Gaston Property Tax Interest. (Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the accrual of interest and G.S. 105-380 and G.S. 105-381 regarding the release, refund, or compromise of taxes, interest shall not accrue on unpaid taxes for fiscal year 1997-98 unless the taxes remain unpaid after June 6, 1998. Interest accruing on taxes that remain unpaid after June 6, 1998, shall be computed according to the schedule stated in G.S. 105-360 in the same manner as though the taxes were unpaid as of January 6, 1998. A resolution adopted pursuant to this act may apply only to fiscal year 1997-98 taxes, receipts of which were not delivered to the tax collector before October 3, 1997.

Section 2. A resolution adopted by a taxing unit's governing body pursuant to this act relieves the tax collector of that taxing unit of any obligation to collect interest on taxes to which the resolution applies that are paid on or before June 6, 1998. After adoption of the resolution, the governing body of the taxing unit or its delegate shall refund any interest subject to Section 1 of this act that was paid by a taxpayer for the period between January 6, 1998, and June 6, 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, AND TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any~~

~~portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day

of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and~~

~~costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State. Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that~~

~~such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this

State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State, and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the~~

~~collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in

any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except~~

~~that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the

period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. This act becomes effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1241-PCS9766-RB

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, AND TO EXTEND THE SUNSET FOR QUALIFIED BUSINESS TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of~~

~~Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy~~

~~upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a

report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment~~

~~of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the

transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to

defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be~~

~~assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be~~

~~passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the

Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an

assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a

redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 25. Sections 1 through 22 of this act become effective September 1, 1998. The remainder of this act becomes effective when it becomes law.

EXPLANATION OF SENATE BILL 1241:
Proposed Committee Substitute
Amendments to the Revenue Laws

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 15, 1998
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1241 incorporates two bills that the committee has previously discussed:

- Senate Bill 1241, which amends several provisions in the penalty sections of the revenue laws at the request of the Department of Revenue. These changes are contained in sections 1 through 22 of the bill. They become effective September 1, 1998.
- Senate Bill 1239, which extends the sunset for the qualified business tax credit an additional four years, until the year 2003. It retains the current $6 million cap on the credit. This change is contained in sections 23 and 24 of the bill. It becomes effective when the act becomes law.

Senate Bill 1241:

G.S. 105-237 gives the Secretary the authority to waive or reduce all penalties imposed under the tax laws, except the penalty for bad checks. In practice, the authority to waive or reduce penalties is delegated to approximately 55 individuals who are in the collection field offices and the audit department located in Raleigh. The Department of Revenue has a penalty policy that these employees must follow to ensure consistent treatment among taxpayers. The Department of Revenue is currently revising its penalty guidelines. As part of the review process, the Department looked at all of the penalty provisions in Chapter 105. Based upon its review of the penalty provisions, the Department of Revenue requested the Revenue Laws Study Committee to recommend the following changes contained in sections 1 - 22 of this bill:

- It conforms the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
- It repeals several penalties that are obsolete or ineffective.
- It provides that a refund of sales taxes, motor fuel taxes, and excise taxes on sacramental wine are barred if filed more than 3 years after their due date. The current law provides a reduction of the amount refunded for late applications.

- It clarifies that additional taxes are assessable as penalties so that it is clear the taxes may be waived by the Secretary. It also clarifies that penalties are assessable as additional taxes to ensure the taxpayer receives the full administrative and judicial remedies applicable to tax assessments. This clarification conforms with the statutory definition of "tax" in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount."
- It provides a uniform penalty for all tax deficiencies that exceed 25% of the tax liability.
- It expands the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC.

Senate Bill 1239:

The qualified business tax credit was enacted in August 1987 to promote economic development for North Carolina business developments. The initial credits applied to both corporations and individual taxpayers and there was a cap on the total amount of all tax credits of $12 million. In response to a United States Supreme Court decision in Fulton Corp. v. Faulkner in 1996, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit will expire for investments made on or after January 1, 1999. The PCS extends the credit for four additional years - until January 1, 2003.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim his allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next 5 years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of

$6 million in tax credits in proportion to the size of the credit claimed by each taxpayer.

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because it reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in a business whose purpose is to invest in businesses with headquarters and operations in North Carolina while no tax reduction is allowed for purchasing similar stock in corporations whose purpose is to invest in businesses with headquarters and operations outside of North Carolina. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit, along with several others, at great length. The original proposal of the Committee was to repeal ALL qualified business investment credits, effective 1-1-97. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include all investments wherever located but was limited to individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50 mile radius of their home.

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

ALBERT COATES LOCAL GOVERNMENT CENTER • 215 NORTH DAWSON STREET • P.O. BOX 1488
RALEIGH, NORTH CAROLINA 27602-1488 • TELEPHONE 919/715-2893 • FAX 919/733-1065

July 8, 1998

Honorable John H. Kerr, III, Co-Chairman
North Carolina General Assembly
Senate Finance Committee
Legislative Office Building, Room 526
Raleigh, North Carolina 27601-2808

Honorable David W. Hoyle, Co-Chairman
North Carolina General Assembly
Senate Finance Committee
Legislative Office Building, Room 300A
Raleigh, North Carolina 27601-2808

Dear Senators Kerr and Hoyle:

This letter is written to express the Association's opposition to an amendment currently under consideration to Senate Bill 1241, "Amendments to the Revenue Laws." The amendment, offered on the Senate Floor on June 16, 1998, by Senator Blust, is designed to require state and local governments to pay costs and expenses, including attorneys' fees, in actions in which taxpayers challenge governmental decisions. In the case of local governments, inclusion of this provision would involve significant costs to local governments in defending challenges that reach the Property Tax Commission. In addition, anticipation of these costs would lead to premature settlement of such disputes.

It is our belief that the current system through which taxpayers are able to challenge state and local tax decisions is balanced and affords ample due process. Adoption of the proposed amendment is unnecessary and would upset the balance that exists. We urge you and other members of the Senate Finance Committee to reject the language included in the proposed amendment.

Sincerely yours,

Jim

James B. Blackburn, III
General Counsel

JBBIII:mcc

cc: Honorable Senator Blust
Members, Senate Finance Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 396
Rules and Operations of the Senate Committee Substitute Adopted 6/29/98

Short Title: Downtown Development Zone Improvement. (Public)

Sponsors:

Referred to: Appropriations.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DOWNTOWN REVITALIZATION BY ALLOWING A CREDIT FOR CONTRIBUTIONS FOR DEVELOPMENT ZONE PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that downtowns are central to the creation of small, locally owned businesses and that vital downtowns also play a role in the recruitment of larger businesses. Strong downtowns reduce urban sprawl and the costs and quality of life problems associated with urban sprawl. For these reasons, the General Assembly finds that revitalizing declining urban areas is crucial to the well-being of the State as a whole.

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.13. Credit for contribution for development zone project.**

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project. The credit may not be taken for the year in which the contribution is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (d) of this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:
a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.
b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.
c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.
d. Its primary function is to act as deal-maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:
a. A community development corporation.
b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701, et seq.).
c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone.

(c) Limitations. -- A taxpayer who claims a credit under this section shall identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is

allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(d) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer shall include with the application a certified appraisal of the value of the property contributed.

(e) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d) of this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of five million dollars ($5,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the contribution was made. The Secretary's allocations based on applications filed pursuant to subsection (d) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(f) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce shall file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department shall notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

Section 3. G.S. 105-129.4(a) reads as rewritten:

"(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the credit allowed by G.S. 105-129.13 without regard to the taxpayer's type of business. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer

engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing or processing.
(5) Warehousing or distribution.

A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, the taxpayer hires at least 40 additional full-time employees to fill new positions at the office. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection."

Section 4. G.S. 105-129.6(a) reads as rewritten:

"(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section."

Section 5. This act is effective for taxable years beginning on or after January 1, 1999.

EXPLANATION OF SENATE BILL 396 (2nd Edition):
Downtown Development Zone Improvement

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 14, 1998
SPONSOR: Senator Rand

Senate Bill 396 adds a new section to the William S. Lee Act to allow an income or franchise tax credit for 25% of the cash or property contributed to a development zone agency for a project to construct or improve residential, commercial, or public real property located in a development zone. The bill becomes effective beginning with the 1999 tax year.

A development zone agency is defined in the bill to include a community development corporation, a community development financial institution, or a local housing authority. The development zone agency receiving the contribution must contract in writing to use the contribution for a development zone improvement project and must obtain the certification of the Secretary of Commerce that it will be undertaking such a project.

Another bill, Senate Bill 1569, the Economic Opportunity Act of 1998, provides for the designation of economically distressed areas located within municipalities as State development zones. It defines a development zone as an area (1) consisting of one or more contiguous census tracts, block groups, or both, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000.

The credit is to be taken in the tax year immediately following the contribution year. The total amount of credits for a given tax year is capped at $5 million. To receive the credit, the taxpayer must file an application by April 15 of the year following the contribution year. The Secretary of Revenue may allow this deadline to be extended to September 15. If more than $5 million of credits are applied for, the Secretary of Revenue will reduce each taxpayer's credit proportionally.

The credit is disallowed to the extent the taxpayer receives anything of value in exchange for the contribution. In addition, no credit is allowed for contributions between related parties or parties under common control. If a development zone agency that agreed to use a contribution for a development zone improvement project later uses the project for another purpose, the taxpayer forfeits any credit allowed for the contribution. Development zone agencies certified by the Secretary of Commerce are required to file audited

financial statements with Commerce on an annual basis. If the Department of Commerce determines that a contribution has been used for a purpose other than for a development zone improvement project, it will notify the Secretary of Revenue of the forfeiture.

A proposal similar to this bill was supported by the Governor's Economic Development Board, but was not included in the Governor's recommended budget.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 396 (PCSA872-LC)
SHORT TITLE: Downtown Development Zone Improvement

FISCAL IMPACT

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

($Million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES (GENERAL FUND)			-$5.0	-$5.0	-$5.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The income tax is administered by the Department of Revenue. Development zones are determined by the Department of Commerce.

EFFECTIVE DATE: Tax years beginning on or after January 1, 1999.

BILL SUMMARY: **Provides for a state income or franchise tax credit for 25% of the cash or property contributed to a development zone agency for a project to construct or improve residential, commercial, or public real property located in a development zone.** The credit is to be taken in the tax year immediately following the contribution year. To receive the credit the taxpayer must file an application by April 15 of the year following the contribution year (Secretary of Revenue may allow deadline to be extended to September 15) and the agency receiving the contribution must contract in writing to use the contribution for the project. Development zone agency is defined in the bill to include a community development corporation, a community development financial institution, or a local housing authority.

The total amount of credits for a given tax year is capped at $5.0 million. If more than this amount of credits are applied for, the credits shall be prorated based on application amounts.

ASSUMPTIONS AND METHODOLOGY: Following the practice established in the 1987 fiscal estimate for the qualified business investment credit, the estimated impact is equal to the capped credit. The reason is that it is impossible to predict in advance the potential amount of contributions under the new credit.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: June 29, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 396, 2nd Editi- Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Shaw of Cumberland
Sen.)

moves to amend the bill on page 4, lines 33-34

( ) WHICH CHANGES THE TITLE

by adding the following between the lines:

"Section 4.1. The Legislative Research Commission shall continue to study downtown revitalization and related issues. The Commission may make an interim report to the 1999 Regular Session of the 1999 General Assembly and shall make a final report to the 2000 Regular Session of the 1999 General Assembly."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97
Committee Substitute #3 Favorable 7/31/97
Senate Commerce Committee Substitute Adopted 6/2/98

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to: Finance.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this

Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by

aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the

unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules

and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education

center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date ~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board,

and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary;~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the

requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering,~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional

engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory

to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~e. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, ~~six~~ seven years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be

qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of~~ and as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and

written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~five~~ six years of progressive, practical experience, ~~four~~ five years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~

surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; seals.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, '~~registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or '~~registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee

required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and

specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done willfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"**§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.**

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the

requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade; or

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit; or

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit; or

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3)

of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision; or

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country; or

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State or a municipal ~~corporation therein;~~ corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation."

Section 24. G.S. 89C-25.1 reads as rewritten:

"**§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.**

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-28 reads as rewritten:

"**§ 89C-28. Existing ~~registration~~ licensure not affected.**

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 26. This act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 794*
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 6/25/97
Committee Substitute #3 Favorable 7/31/97
Senate Commerce Committee Substitute Adopted 6/2/98
Proposed Senate Committee Substitute H794-PCS3158-LA001

Short Title: Engineering and Land Surveying Changes. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"**§ 89C-2. Declarations; prohibitions.**

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with ~~his~~ the person's name or otherwise assume or advertise any title or description tending to convey the impression that ~~he~~ the person is either a professional engineer or a ~~registered~~ professional land surveyor, unless ~~such~~ the person has been duly ~~registered as such.~~ licensed. The right to engage in the practice of engineering or land surveying ~~shall be deemed~~ is a personal right, based on the qualifications of the ~~individual~~ person as evidenced by ~~his~~ the person's certificate of ~~registration,~~ licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors provided for by this Chapter.

(1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.

(3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.

(4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.

(5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.

(6) Practice of engineering. --

a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself~~ the person to be a professional engineer, or through the use of some other title implies that ~~he~~ the person is a professional engineer or that ~~he~~ the person is ~~registered~~ licensed under this Chapter; or who holds ~~himself~~ the person out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) Practice of land ~~surveying by registered land surveyors.~~ surveying. --

a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of

information for the providing of these services is accomplished by conventional ground measurements, by aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:

1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;
3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.

b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems;

(vi) streets or storm sewer systems except as incidental to a subdivision.

(8) Professional engineer. -- A person who has been duly ~~registered and~~ licensed as a professional engineer by the Board established by this Chapter.

(8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.

(9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined,~~ as attested by ~~his registration~~ the person's licensure as a ~~registered~~ professional land surveyor by the Board.

(9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

(10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"**§ 89C-4. State Board of ~~Registration;~~ Examiners for Engineers and Surveyors; appointment; terms.**

A State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy

occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"**§ 89C-5. Board members; qualifications.**

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"**§ 89C-6. Compensation and expenses of Board members.**

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his service~~ services the per diem and, in ~~addition thereto,~~ addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of ~~his~~ the office."

Section 6. G.S. 89C-8 reads as rewritten:

"**§ 89C-8. Organization of the Board; meetings; election of officers.**

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a ~~chairman,~~ chair, a ~~vice-chairman,~~ vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"**§ 89C-9. Executive ~~secretary;~~ director; duties and liabilities.**

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform ~~such~~ the duties assigned to ~~him~~ the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of ~~his~~ the director's ~~duties.~~ duties assigned. The premium on ~~said~~ the bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"**§ 89C-10. Board powers.**

(a) The Board ~~shall have the power to~~ may adopt and amend all ~~rules and regulations. Additionally, the Board shall have the power to adopt such rules,~~ rules and rules of ~~procedure, and regulations,~~ procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the ~~giving of~~ administration of ~~examinations and the conduct thereof,~~ examinations, and the ~~power~~ authority to enforce ~~such~~ the rules of professional conduct as ~~may, from time to time,~~ may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified ~~above~~ in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized~~ may in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof.~~ of the provisions of this Chapter. In ~~such proceedings,~~ proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof.~~ of the provisions of this Chapter. The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for ~~registration~~ licensure to ~~such~~ any examination ~~as it deems~~ necessary to determine ~~his~~ the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of ~~registration~~ licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a ~~registrant~~ licensee is confidential until the Board issues a citation to the ~~registrant.~~ licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently ~~registered~~ licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for ~~registration~~ licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such~~ instructional programs through extension courses or other ~~media, and the~~ media. The Board may enter into plans or agreements with community colleges, public or

private institutions of higher learning, ~~both public and private,~~ State and county boards of education, or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical to~~ encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules ~~and regulations~~ as may be necessary for ~~such~~ the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars ($250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said~~ this fund on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and ~~Land~~ Surveyors, conditioned upon the faithful performance of ~~his duties.~~ the duties assigned. The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for ~~registration,~~ licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of ~~registration~~ licensure granted, and the date

~~of such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein,~~ by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all ~~registered~~ licensed professional engineers and all ~~registered~~ licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each ~~year; such~~ year. The roster shall be printed by the Board out of the Board's fund ~~of said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations.~~ rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board,~~ Board attested by the ~~affidavits of the chairman~~ chair and the ~~secretary,~~ secretary and a copy of the ~~said~~ the roster of ~~registered~~ licensed professional engineers and ~~registered~~ professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for ~~registration.~~ licensure.**

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for~~ licensure as a professional ~~engineer~~ engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration:~~ licensure:

(1) As a professional engineer (shall meet one):

a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and ~~who~~ who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for

Engineering and Surveying whose qualifications meet the requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination, and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering;~~ engineering examination and ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examinations, the applicant shall be granted

a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in~~ the principles and practice of ~~engineering.~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and~~ which ~~he~~ the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an ~~engineer-in-training~~ engineering intern (shall meet one):

a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an ~~engineer-in-training,~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in~~ the fundamentals of ~~engineering.~~ engineering examination. The applicant shall be notified if the examination was passed or not passed and if ~~passed he~~ passed, the applicant shall be certified as an

~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or ~~registered~~ professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered~~ professional land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered~~ licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, and recommendations by ~~references, and reviewing of these categories during an oral examination.~~ references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

(1) As a ~~registered~~ professional land surveyor (shall meet one):

a. Rightful possession of a ~~B.S.~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered~~ professional land surveyor and satisfactorily passing ~~such~~ any oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor,~~ the practical experience required under this subdivision, the applicant may ~~elect~~ apply to the Board to take the second examination ~~(Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision.~~ (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

~~c. Land Surveyor-in-Training Certificate, Experience, and Examination. — A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing ~~such~~ any oral and written ~~examination written in the presence of and~~ examinations required by the Board, all of

which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be qualified by the Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the~~ principles and practice of land surveying examination and the ~~two four-hour examinations on the~~ fundamentals of land ~~surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ application be licensed to practice land surveying, providing ~~his~~ a written application

is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land ~~surveyor-in-training~~ surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or~~ and oral examination ~~taken in the presence of and~~ as required by the Board.

b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing ~~such~~ any oral and written examinations ~~written in the presence of and~~ required by the Board.

c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of five years of progressive, practical experience, four years of which shall have been under a practicing ~~registered~~ licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"**§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.**

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount~~ to the Board an application fee not to exceed one hundred dollars ($100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10.~~ but shall not exceed one hundred dollars ($100.00). The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11.~~ but shall not exceed seventy-five dollars ($75.00). The fee for

renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate ~~failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board.~~ with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:

"**§ 89C-15. Examinations.**

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13,~~ G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

(1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.

(2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.

(3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. Passing ~~both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and

applied disciplines of land ~~surveying, one examination on basic disciplines and the other examination covering applied disciplines.~~ surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:

"**§ 89C-16. Certificates of ~~registration;~~ licensure; effect; ~~seals~~.**

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, '~~registered~~ 'professional land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a ~~registered~~ professional land surveyor, while the ~~said~~ certificate of ~~registration~~ licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon ~~registration~~ licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, ~~serial~~ license number, and the legend, 'professional engineer,' or '~~registered~~ 'professional land surveyor.' Final drawings, specifications, plans and reports prepared by a ~~registrant~~ licensee shall, when issued, be certified and stamped with the ~~said~~ seal or facsimile ~~thereof~~ of the seal unless the ~~registrant~~ licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a ~~registrant~~ licensee to affix, or permit ~~his~~ the licensee's seal and signature or facsimile ~~thereof~~ of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use ~~his registered~~ the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such~~ any evidence ~~as it deems~~ necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00).

The secretary of the Board shall notify by mail every person ~~registered~~ licensed under this Chapter of the date of expiration of ~~his~~ the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars ($50.00).~~ seventy-five dollars ($75.00). Failure on the part of any registrant to renew ~~his~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed.~~ by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a ~~registrant~~ licensee to renew ~~his registration~~ the license for a period of ~~36~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 16. G.S. 89C-18 reads as rewritten:

"**§ 89C-18. Duplicate certificates.**

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars ($25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"**§ 89C-19. Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private

property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof,~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto,~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof,~~ of the State, or municipal ~~corporation therein.~~ corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"**§ 89C-20. Rules of professional conduct.**

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for ~~Professional~~ Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying.~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"**§ 89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.**

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration,~~ licensure, or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.

(2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.

(3) Guilty of any felony or any crime involving moral turpitude.
(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.
(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.
(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof,~~ amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;
(3) Whether the violation(s) were done willfully and maliciously; and
(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action -- Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such~~ a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration.~~ licensee's certificate.

(d) A ~~registrant~~ licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient ~~reasons it may deem sufficient,~~ reasons as it may determine, reissue a certificate of ~~registration~~ licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"§ 89C-23. Unlawful to practice engineering or land surveying without ~~registration;~~ licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration~~ licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration,~~ licensure, or any person who shall falsely impersonate any other ~~registrant~~ licensee of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration,~~ licensure, or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered~~ unlicensed persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same.~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be~~ necessary ~~in carrying~~ to carry out the provisions of this Chapter. The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"§ 89C-24. ~~Registration~~ Licensure of corporations and business firms that engage in the practice of engineering or land surveying.

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee.~~ an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm

is subject to the same duties and responsibilities as an individual ~~registrant. Registration~~ licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that ~~such~~ the person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his~~ the person's own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration;~~ licensure; provided, however, ~~such~~ the person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a~~ the person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his~~ the person's own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~

professional land surveyor provided for in subdivisions (2) and (3) of this section, provided that ~~said~~ the work as an employee may not include responsible charge of design or supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such~~ performing the professional service in ~~his~~ the person's own state or country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said~~ the government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof;~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof;~~ of the State or a municipal ~~corporation therein;~~ corporation: provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work,

not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 24. G.S. 89C-25.1 reads as rewritten:

"§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-28 reads as rewritten:

"§ 89C-28. Existing ~~registration~~ licensure not affected.

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 26. This act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

EXPLANATION OF HOUSE BILL 794 (PCS):
Engineering and Land Surveying Changes

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 15, 1998
SPONSOR: Representative Ives

Senate Bill 794 makes several changes to the laws governing the licensing of land surveyors and engineers. The Bill passed the House during the Long Session and was referred to Senate Commerce. The Bill was then re-referred to Senate Finance There are numerous grammatical and technical changes throughout the Bill, and there are also several substantive changes. Among these changes are the following:

- The certificate of registration for land surveyors and professional engineers will become known as a certificate of licensure.
- Registered land surveyors will become known as professional land surveyors. Engineers are already referred to under the existing law as professional engineers. (Page 1 of Bill)
- The definition of what constitutes the practice of land surveying is revised and updated. (Page 3-5 of Bill)
- Definitions are added for "inactive licensee", "retired professional engineer", and "retired Professional land surveyor". (Page 2 and 6 of Bill)
- The State Board of Registration for Professional Engineers and Land Surveyors, which is renamed in the Bill as the "State Board of Examiners for Engineers and Surveyors", may license continuing education sponsors and may charge a fee up to $250.00 for the license. (Page 10 of Bill)
- The requirements for licensure as a land surveyor or engineer are changed as follows:
    - Comity applicants for a professional engineer license must submit 5 references, 2 of whom are professional engineers having personal knowledge of the applicant's engineering experience. (Page 11 of Bill)
    - The engineer-in-training is renamed the engineering intern. A student who has attained senior status in an accredited engineering program can be certified to sit for the exam as an intern. Under current law, a graduate of an engineering curriculum or related science curriculum can also be certified to sit for the exam. (Page 12 and 14 of Bill)
    - A land surveyor applicant with a bachelor of science degree must have 2 years (currently 1 year) of practical experience. An applicant with an associate degree in surveying technology must have 4 years (currently 3 years) of practical experience, 3 of which (currently 2 of which) were under a licensed land surveyor. A high school graduate or a person

with a high school equivalency certificate must continue to have at least 7 years of practical experience. Current law requires that six of these years must have been under a license land surveyor. The Bill spells out when these particular applicants can take the two required exams on page 17 of the Bill

- A land surveyor intern with a high school education must currently have 5 years of experience, 4 of which are under a licensed land surveyor. This requirement is not changed. (Page 20 of Bill)

- Licenses are added for photgrammetrists who have 7 years experience, meet certain other qualifications, and apply to the Board by July 1, 1999. After that date, applicants for photogrammetry must meet the same licensing requirements as a land surveyor. Photogrammetry is the science of making reliable measurements by use of photographs and especially aerial photographs. (Page 18 of Bill)
- A provision is added stating that land surveying consists of different disciplines and that a surveyor can practice only in those areas within the surveyor's expertise (Page 19 of Bill).
- Immediate family members of the applicant are disqualified from serving as references. (Page 20 of Bill).
- The amount of the initial and renewal fees are changed for certification as a professional engineering or land surveying corporation. Current law requires that the initial fee not exceed $50.00 in accordance with G.S. 55B-10 of the Professional Corporation Act), and that the renewal fee not exceed $25.00 in accordance with G.S. 55B-11. The Bill provides that the initial fee shall not exceed $100.00 , and that the renewal fee shall not exceed $75.00. (Page 21 of Bill)
- The criteria for retaking an exam after failure or unexcused absence are revised. An individual with any combination of three failures or unexcused absences on an examination must wait 12 months before applying with the appropriate application fee for reexamination. This individual then may be retested only once in a 12-month period. Currently, if a person fails the exam three times, the person must make a written appeal to the Board before taking a reexamination.(Page 21 of Bill)
- The annual license renewal fee increases from a maximum of $50.00 to $75.00. (Page 24 of Bill).
- The "grace" period for renewing late, without having to reapply and retake the exam, is reduced from 36 months to 12 months following delinquency. If a person fails to renew a certificate during January and does not submit within the next 12 months, the renewal fee plus a late penalty of $100 is

required. Current law requires that the renewal fee be increased ten percent for each month or fraction of a month that a payment is late.(Page 24 of Bill).

- A licensee can ask for and be granted inactive status Once granted, the licensee must submit annual renewal fees, but is not subject to continuing professional competency requirements.(Page 24 of Bill).
- Licensees must cooperate fully with the Board in the course of any investigation. (Page 26 of Bill)

The act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 794 (Senate Finance Committee Substitute)

SHORT TITLE: Engineering and Land Surveying Changes

SPONSOR(S): Rep. Ives

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Special Revenue Fund					
Photogrammetrists	$7,500	$3,000	$3,000	$3,000	$3,000
Corporate Rates	$95,000	$100,000	$105,000	$110,000	$120,000
Individual	$602,000	$602,000	$602,000	$602,000	$602,000
Total	$704,500	$705,000	$710,000	$715,000	$725,000
EXPENDITURES					
Special Revenue Fund	NA	NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N. C. State Board of Registration for Professional Engineers and Land Surveyors

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

BILL SUMMARY: The bill make substantive changes to the North Carolina Engineering and Land Surveying Act (GS Chapter 89C).

ASSUMPTIONS AND METHODOLOGY: The following sections of the bill have fee changes or new fees imposed:

Section 8 - A $250 license fee is charged to sponsors of continuing professional competency activities such as courses or extension courses. The Board currently has agreements with 150 groups offering this service and will not impose this license fee on them. The Board does not

anticipate any new entrants into this field in the near future. Since there is no charge in the bill for annual renewal of the license, no revenue is anticipated from this section.

Section 11 - This section will allow Photogrammetrists to be licensed for the first time by the Board. The Board estimates that the 75 persons that currently qualify for this license in North Carolina will pay a $100 application fee in FY 1998-99 and a $40 annual renewal fee thereafter.

Section 12 - Part (b) of this section says that the "Board may charge any fee necessary to defray the cost of any required examinations". The Board has been doing this, but had no statutory authority. Part (c) of this section sets the certification fee for a corporation at a rate not to exceed $100. The fee is currently $50 and the Board will raise the fee to $100 upon passage of the bill. This section also raises the renewal fee for corporations to a rate not to exceed $75. The rate is now $25 and the Board plans to raise it to $50.

There are currently 1700 firms registered with the Board. The Executive Secretary of the Board estimates that 200 firms will apply for a license each year, while 100 firms will choose not to renew their license. This fluctuation in licenses is due mainly to out of state companies working in the state.

	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Renewal	1,700	1,800	1,900	2,000	2,100	2,200
Lapse	100	100	100	100	100	100
New	200	200	200	200	200	200

The chart below shows the additional revenue generated if the Board increases the rates to $100 initial and $75 renewal for corporations - the maximum allowed in the bill.

	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Renewal	$80,000	$85,000	$90,000	$95,000	$100,000	$110,000
New	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
	$90,000	$95,000	$100,000	$105,000	$110,000	$120,000

Section 15 - The renewal of an individual license is increased from an amount not to exceed $50 to an amount not to exceed $75. The 17,200 individuals now registered with the Board pay $40 a year. The Board does not plan to raise this fee in the near future. However, if the Board reconsidered and voted to increase their fee from $40 to the maximum $75, it would increase revenue $602,000 each year.

This section also increases the late fee from 10% a month to a flat rate of $100. There is no estimate of the impact of this fee, but is hoped that it will discourage late filers.

NOTE: The Board's Financial Statement for the year ending November 30, 1997 shows a fund balance of $426,696. The Board tries to keep a reserve equal to one half of their annual budget ($1,060,000 in 1998) for emergencies.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 15, 1998

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-15-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alice Garland	Electricities
Katherine Davis	ElectriCities
Robert C. Watson	Office of the Gov.
Jerry CARTER	NC Bd. of Registration
Roger Bone	Bone & Assoc.
Jane Upchurch	CP&L
John McAlister	Duke Energy
Jim Blackburn	NC Association of County Commissions
Eric Rudolph	Cherokee Co
Stacy Flannery	Non-Profit Homes for the Aging
Andy Romanet	N.C. League of Municipalities

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-15-98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	ZDA, PA
John Murdock	AWWA/WEA
Willie Riddick	DOR
Laura DeVivo	DENR
Bill Scroggs	NC BAR ASSOC
Dave Bobik	Explorer —
Mike Carpenter	NCASA
Kevin Howell	NCBA
Don Carrington	Locke

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Wednesday, July 15, 1998

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

FAVORABLE

H.B. **1611** Carteret-Craven Boundardy Clarification
Sequential Referral: none
Recommended Referral: none

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **186** Delay Gaston Property Tax Interest
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Monday, July 20, 1998

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)	794	Engineering and Land Surveying Changes	
		Draft Number:	PCS3158
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill acted on in Senate Finance on 7-15-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JULY 21, 1998

12 NOON - ROOM 544

SB 882 - Civil Penalties Fund Established - Sen. Winner

SB 1241 - Amendments to Revenue Laws - Sen. Hoyle

SB 1291 - Transportation Corridors - Sen. Gulley

SENATE FINANCE COMMITTEE

TUESDAY, JULY 21, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, July 21, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 27 committee members present. The pages were Blair Sweeney from Hickory, sponsored by Senator Moore, Mary Barber from Raleigh, sponsored by Senator Miller, and Steve Ayers from Kernersville, sponsored by Senator Horton.

S.B. 882 - Civil Penalties Fund Established.

Senator Winner was recognized to explain her bill and upon her motion, a Committee Substitute was adopted for discussion by the Committee. After Senator Winner's explanation and questions by the members, on motion by Senator Dannelly, the Committee Sub was given a Favorable Report by the Committee. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

S.B. 1241 - Amendments to Revenue Laws.

Senator Hoyle was recognized and explained to the Committee that at a previous meeting, a Committee Substitute (#2) had been adopted by the Committee. Senator Blust offered an Amendment (#1) and explained his Amendment. After a lengthy discussion of this Amendment, Senator Blust's motion to adopt his Amendment failed on vote of the Committee. Senator Ballantine was recognized to send forth an Amendment (#2) and to explain his Amendment. After Senator Ballantine's explanation, on his motion, his Amendment was adopted by the Committee and on motion by Senator Gulley, the Committee Sub, as amended, was given a Favorable Report by the Committee. Copy of original Committee Sub, Amendments, new Committee Sub, Explanation and a final Committee Sub included in the Minutes.

S.B. 1291 - Transportation Corridors.

Senator Gulley was recognized to explain his bill and sent forth an Amendment which was adopted on his motion. After his explanation, Senator Dannelly moved for a Favorable Report for S.B. 1291 (SCS # 3), as amended, and the motion carried. Copy of

Bill, Amendment, new Committee Sub, Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 882

Short Title: Civil Penalties Fund Established. (Public)

Sponsors: Senators Winner; Lee, Odom, Perdue, and Plyler.

Referred to: Finance.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE THE CLEAR PROCEEDS OF ALL CIVIL PENALTIES AND CIVIL FORFEITURES THAT ARE COLLECTED BY STATE AGENCIES BE DEPOSITED IN THE STATE CIVIL PENALTY AND FORFEITURE FUND.

The General Assembly of North Carolina enacts:

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

EXPLANATION OF SENATE BILL 882 (PCS):
Civil Penalties Clarified

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 20, 1998
SPONSOR: Senator Winner

The proposed committee substitute for Senate Bill 882 makes clarifying changes to the statutes of a number of State agencies requiring these agencies to deposit the clear proceeds of civil penalties and forfeitures into the Civil Penalty and Forfeiture Fund. This Fund was created during the last session of the 1997 General Assembly, as part of Senate Bill 352 (The Appropriations Act). The Fund consists of the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and that are payable to the county school fund pursuant to Section 7 of Article IX of the State Constitution. The State agency must remit these proceeds to the Office of State Budget and Management within ten days after the close of the calendar month in which the penalties or forfeitures were collected or received. The Office of State Budget and Management then must transfer the funds to the State School Technology Fund. These funds will be allocated to local school units on the basis of average daily membership (ADM).

Section 7 of Article IX of the State Constitution provides that the "clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools." The North Carolina Supreme Court in *Craven County Board of Education v. Boyles*, 343 N.C. 87 (1996), made it clear that the above constitutional provision covers penalties paid to a State agency. In that court case the issue was whether monies paid to the Department of Environment and Natural Resource (DENR)pursuant to a settlement agreement for violations of environmental laws constituted a penalty, forfeiture, or fine under Article IX, Section 7 of the State Constitution. (DENR had assessed a civil penalty against a pulp mill in Craven County.) In deciding that the monies were covered by the State Constitution and therefore should go to the Craven County Board of Education, the Court explained that the monies accrued to the State and that they constituted a penalty. The creation of the Civil Penalty and Forfeiture Fund was enacted after this Supreme Court decision.

Constitutional issues that remain to be litigated are whether the General Assembly has the authority to distribute fines and forfeitures of a State agency on the basis of average daily membership rather than to the county of origin and whether the General Assembly has the authority to transfer the monies to the

School Technology Fund. There is also disagreement about the treatment of late fees, parking and library fines, and some penalties assessed by the Department of Revenue and Department of Transportation. The last group of penalties are viewed by the Department of Revenue and Department of Transportation as taxes instead of fines and forfeitures.

The proposed committee substitute clarifies that the civil penalties and forfeitures from certain State agencies will go to the Civil Penalty and Forfeiture Fund. The proposed committee substitute contains the following penalties and forfeitures from State agencies that both the Attorney General's Office and the School Board Association agree are covered by the Craven County decision.

Department of Administration

- Civil penalties assessed for violations of Fair Housing Act - Page 1.
- Civil penalty assessed for damage or sale of archaeological resource in violation of Archaeological Resources Act. - Page 2.

Department of Agriculture and Consumer Services

- Civil penalties assessed for violations of Animal Welfare Act. - Page 3
- Civil penalty for violations of Weights and Measures Act. - Page 3.
- Civil penalty for violations of Structural Pest Control Act - Page 3.
- Refund to consumer of agriculture liming and landplaster material found deficient in the material components claimed by the manufacturer. -.Page 4.
- Civil penalties for violations of Wholesale Prescription Drug Distribution Law. - page 5.
- Civil penalties for violation of the Rendering Plants Law. - page 5
- Civil penalties for violation of the Plant Protection Act. - Page 5
- Forfeiture and sale of plants possessed in violation of the Plant Protection and Conservation Act. - Page 5.
- Civil penalties for violations of the Commercial Feed Law. - Page 6.
- Civil penalties for violations of Animal Diseases Control Law. - Page 6.
- Civil penalty for violation of operation of public livestock markets.- Page 6.
- Civil penalty for violating livestock prompt payment law. - Page 7.
- Civil penalty for violations of Livestock Dealers Licensing Act. - Page 7.
- Civil penalty for violations of poultry, hatcheries, and chicken dealers law.
- Civil penalty for violation of meat inspection laws. - Page 7.
- Civil penalties for violation of the law regulating disposal of dead and diseased poultry commercial farms.
- Civil penalty for violations of biological residues in animals law. - Page 9.
- Civil penalty for violation of Honey and Bee Act. - Page 8.
- Civil penalties for violations of the commercial fertilizer law. - Page 9.
- Civil penalties for violation of Gasoline and Oil Inspection Law. - Page 9.

- Civil penalties for violation of Liquefied Petroleum Gases Law. - Page 10.
- Civil penalties for violations of Pesticide Law. - Page 11.

Department of Commerce

- Penalties imposed by the ABC Commission.-.Page 11
- Civil penalties under Chapter 53, Banks.-. Pages 11-14.
- Civil penalties under Chapter 54B, Savings and Loan Associations.-.Page 15.
- Civil penalties under Chapter 54C, Savings Banks.-.Pp 15-16.
- Civil penalty for selling article without required inspection.-.Page 16.
- Penalty for commander of vessel for taking articles on board which were not inspected as required.

Department of Environment and Natural Resources

- Civil penalties for violations of Mining Act of 1971.-.Page 16.
- Civil penalty for violation of Act controlling exploration for uranium
- Civil penalty for violations of Well Construction Act.-.Page 17.
- Penalty for violations of Water Treatment Facilities Certification - Page 17.
- Civil penalty for violation of laws concerning certification of waste management system operators.-.Page 17.
- Penalty for violating Radiation Protection Act.-.Page 18.
- Forfeiture of bond given by fishery license agents.-.Page 18.
- Violation of commercial and sport fisheries licensing law.-.Page 19.
- Penalty for violation of Oil and Gas Conservation Act.-.Page 19.
- Proceeds from forfeiture and sale of contraband oil, gas, and product.
- Penalty for noncompliance with Sedimentation Control Law.-.Page 21.
- Civil penalty for violations of coastal management standards.-.Page 21.
- Penalties imposed under Chapter 130A, Public Health.-.Pp 22-27.
- Penalties imposed under Chapter 143, State Departments, Institutions, and Commissions.-.Pp 27-32.

Department of Health and Human Services

- Penalty for circumvention of self-referrals by health care providers.-.Page 32.
- Civil penalty imposed against child day care facilities or homes for violating licensure and standards.-.Page 32.
- Civil penalty for failure of payors/employers to comply with employee's child support enforcement orders.-.Page 33.
- Civil penalty for violation of certification of adult day care program.-.Page 33.
- Civil penalties imposed on adult care homes and nursing facilities.-.Page 34.
- Civil penalty imposed on nursing homes.-.Page 34.
- Civil penalties for violations of certificate of need law.-. Page 34.
- Penalty for violation of solicitations of contributions law.-.Page 35.

Department of Insurance

- Penalties imposed under Chapter 58, Insurance.-.Pp 35-39.
- Civil penalties for violating laws governing manufactured homes.-.Page 39.

Department of Justice

- Civil penalty against judgment creditor - Page 40
- Fine for unlawfully withholding title to an office. - Page 40.
- Civil penalties for violation of lottery and gaming laws.-.Page 41.
- Civil penalties for violations of invention development services law - Page 41.
- Civil penalties for violations laws of private protective services.-.Page 41.
- Civil penalties for violations of monopolies, trusts, and consumer protection laws.-.Page 42.
- Penalty for lender requiring borrower to deal with certain insurer.-.Page 42.
- Civil penalty against debt collectors.-.Page 43
- Civil penalty for violations of Motor Fuel Marketing Act.-.Page 43.

Department of Labor

- Civil penalties for violations of Chapter 95,Department of Labor and Labor Regulations, and Chapter 97, Workers' Compensation Act. - Pp45-47.

Department of Revenue

- Civil penalty for violation of Chapter 105B, Defaulted Student Loan Recovery Act.-.Page 48

Secretary of State

- Civil penalties for violations of the Business Corporation Act, Nonprofit Corporation Act, laws governing foreign trade zones, the NC Securities Act, the NC Investment Advisers Act, the Commodities Act, and the Boxing laws.-Pp 48-52.

Utilities Commission

- Civil penalty for violations of safety standards for gas pipeline facilities and for other violations of Chapter 62, Public Utilities.-.Pp 52-53.

Civil penalties for violations of Alarm Systems Licensing Act, and laws of the State Board of Architecture, Board of CPA Examiners, Board of Elections, Board of Electrical Contractors, Board of Employee Assistance Professionals, Board of Professional Engineers and Land Surveyors, Board of Soil Scientists, Veterinary Medical Board, the Cape Fear River and Morehead City Navigation and Pilotage Commission, and the Real Estate Commission.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 882 (Proposed Committee Substitute)

SHORT TITLE: Civil Penalties Law Clarified

SPONSOR(S): Senator Winner

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of State Budget & Management; All state agencies with civil penalties

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

BILL SUMMARY: The act requires state agencies to deposit the clear proceeds of civil penalties and civil forfeitures into the Civil Penalty and Forfeiture Fund.

ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact because section 8.20 of the 1997 Appropriations Act (S. L. 1997-443) established the Civil Penalty and Forfeiture Fund and directed all state agencies to remit the proceeds of all civil penalties and civil forfeitures to the Office of State Budget & Management for deposit into this fund. This legislative action was prompted by a 1996 state supreme court ruling in Craven County Board of Education v. Boyles that said state agencies must also comply with the section of the state constitution requiring penalties and fines be used to benefit public schools. It is estimated that agencies will transfer $3 to $5 million a year into the Civil Penalty and Forfeiture Fund.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: July 20, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 882
Proposed Committee Substitute S882-PCS7887

Short Title: Civil Penalties Law Clarified. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE STATE AGENCIES TO DEPOSIT THE CLEAR PROCEEDS OF CIVIL PENALTIES AND CIVIL FORFEITURES INTO THE CIVIL PENALTY AND FORFEITURE FUND.

The General Assembly of North Carolina enacts:

PART I. DEPARTMENT OF ADMINISTRATION

A. CIVIL PENALTIES NOT TO EXCEED $10,000 OR $25,000 OF $50,000 ASSESSED FOR VIOLATIONS OF FAIR HOUSING ACT

Section 1. G.S. 41A-7(l)(3) reads as rewritten:

"(3) The Commission's final decision may be made by a panel consisting of three Commission members appointed by the chairperson of the Commission. If the Commission, in its final decision, finds that a respondent has violated or is about to violate this Chapter, it may order such relief as may be appropriate, including payment to the complainant by the respondent of compensatory damages and injunctive or other equitable relief. The Commission's order may also assess a civil penalty against the respondent:

a. In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;

b. In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

c. In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

If the acts constituting the unlawful discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in sub-subdivisions b. and c. of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

The clear proceeds of civil penalties assessed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 ASSESSED IN CONSULTATION WITH DEPARTMENT OF CULTURAL RESOURCES FOR DAMAGE OR SALE OF ARCHAEOLOGICAL RESOURCE IN VIOLATION OF ARCHAEOLOGICAL RESOURCES ACT

Section 2. G.S. 70-16 reads as rewritten:

"§ 70-16. Civil penalties.

A civil penalty of not more than five thousand dollars ($5,000) may be assessed by the Department of Administration, in consultation with the Department of Cultural Resources, against any person who violates the provisions of G.S. 70-15. In determining the amount of the penalty, the Department shall consider the extent of the harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment by registered or certified mail. The notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Department may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment.

The Department may use the assessed funds to rectify the damage to archaeological ~~resources or to otherwise effectuate the purposes of this Article.~~ resources. The clear proceeds of all assessed funds not used to rectify the damage shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART II. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

A. CIVIL PENALTIES NOT TO EXCEED $5,000 ASSESSED FOR VIOLATIONS OF THE ANIMAL WELFARE ACT

Section 3. G.S. 19A-40 reads as rewritten:

"**§ 19A-40. Civil Penalties.**

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 IMPOSED FOR WILLFUL VIOLATIONS OF THE WEIGHTS AND MEASURES ACT

Section 4. (a) G.S. 81A-30.1 reads as rewritten:

"**§ 81A-30.1. Civil penalties.**

A civil penalty of not more than five thousand dollars ($5,000) for each violation may be assessed by the Commissioner against any person who willfully violates this Chapter. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty shall be assessed under this section unless the person has been given an opportunity for a hearing pursuant to the Administrative Procedure Act. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 81A-2 reads as rewritten:

"**§ 81A-2. Administration of these Articles.**

The provisions of this Chapter shall be administered by the Commissioner or his authorized agent. For the purpose of administering and giving effect to the provisions of this Chapter, the provisions of Handbook 44 as adopted by the National Conference on Weights and Measures, are hereby adopted except insofar as modified or rejected by the North Carolina Board of Agriculture. The North Carolina Board of Agriculture is empowered to make such further rules and regulations as may be necessary to make effective the purposes and provisions of this Chapter. ~~All~~ Except as otherwise provided in G.S. 81A-30.1, all fees or moneys received by the Commissioner pursuant to this Chapter shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of enforcing this Chapter."

C. CIVIL PENALTIES OF NOT MORE THAN $2,000 FOR VIOLATIONS OF STRUCTURAL PEST CONTROL ACT

Section 5. (a) G.S. 106-65.41 reads as rewritten:

"**§ 106-65.41. Civil Penalties.**

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (12). In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 106-65.38 reads as rewritten:

"**§ 106-65.38. Disposition of fees and charges.**

~~All~~ Except as otherwise provided in G.S. 106-65.41, all fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture and Consumer Services General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts."

D. REFUND TO CONSUMER OF AGRICULTURE LIMING AND LANDPLASTER MATERIAL FOUND TO BE DEFICIENT IN THE MATERIAL COMPONENTS CLAIMED BY THE MANUFACTURER

Section 6. G.S. 106-92.11 reads as rewritten:

"**§ 106-92.11. Deficiencies: refunds to consumer.**

Should any of the agricultural liming and landplaster materials defined in this Article be found to be deficient ~~in~~ the components claimed by the manufacturer or registrant thereof, said manufacturer or registrant, upon official notification to [of] such deficiency by the Commissioner of Agriculture, shall, within 90 days, make refunds to the consumers of the deficient materials as follows:

In case of 'agricultural liming material' if the deficiency is five percent (5%) of the guarantee or more, there shall be refunded an amount equal to three times the value of such deficiency and in case of 'landplaster,' for deficiencies in excess of one percent (1%) of the guarantee, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture, where said refund shall be held for payment to the proper consumer upon order of the Commissioner. If the consumer to whom the refund is due cannot be found within a period of one year, the clear proceeds of such refund ~~shall revert to the Department of Agriculture and Consumer Services for expenditure by the Commissioner in promoting the agricultural programs of the State.~~ shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF NOT MORE THAN $10,000 MAY BE IMPOSED FOR VIOLATIONS OF THE WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS LAW

Section 7. G.S. 106-145.6(c) reads as rewritten:

"(c) Civil Penalty. -- The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates any provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. ~~Penalties collected shall be credited to the General Fund.~~ The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE IMPOSED FOR VIOLATION OF THE RENDERING PLANTS LAW OR RELATED RULES

Section 8. G.S. 106-168.16 reads as rewritten:

"§ 106-168.16. Civil penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CIVIL PENALTIES OF NOT MORE THAN $2,000 MAY BE IMPOSED FOR VIOLATIONS OF THE PLANT PROTECTION ACT

Section 9. G.S. 106-202.19(a2) reads as rewritten:

"(a2) A civil penalty of not more than two thousand dollars ($2000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. FORFEITURE AND SALE OF PLANTS POSSESSED IN VIOLATION OF G.S. 106-202.19

Section 10. G.S. 106-202.20 reads as rewritten:

"§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. ~~The proceeds from such a sale~~

~~shall be paid to the North Carolina Department of Agriculture and Consumer Services for use in the enforcement of this Article.~~ The clear proceeds of forfeitures and sales pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTIES OF THE SMALLER OF $25.00 OR THE RETAIL VALUE OF THE PRODUCT ASSESSED FOR VIOLATIONS OF THE COMMERCIAL FEED LAW

Section 11. G.S. 106-284.42(l) reads as rewritten:

"(l) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the ~~amount~~ clear proceeds of the penalty assessed shall be ~~paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this Article.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE ANIMAL DISEASES CONTROL LAW

Section 12. G.S. 106-405.20 reads as rewritten:

"**§ 106-405.20. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. CIVIL PENALTY NOT TO EXCEED $5,000 FOR VIOLATING LAWS CONCERNING THE OPERATION OF PUBLIC LIVESTOCK MARKETS

Section 13. G.S. 106-417.1 reads as rewritten:

"**§ 106-417.1. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. CIVIL PENALTY NOT TO EXCEED $5,000 FOR VIOLATING LIVESTOCK PROMPT PAY LAW

Section 14. G.S. 106-418.7A reads as rewritten:

"**§ 106-418.7A. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

M. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE LIVESTOCK DEALERS LICENSING ACT

Section 15. G.S. 106-418.16 reads as rewritten:

"**§ 106-418.16. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

N. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE POULTRY, HATCHERIES, AND CHICKEN DEALERS LAW

Section 16. G.S. 106-549.01 reads as rewritten:

"**§ 106-549.01. Civil penalties.**

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. CIVIL PENALTY OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATION OF THE MEAT INSPECTION LAWS

Section 17. G.S. 106-549.35(c) reads as rewritten:

"(c) The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or Article 49B, or any rule promulgated thereunder. In determining the amount of the penalty,

the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

P. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATION OF THE LAW OR RULE REGULATING THE DISPOSAL OF DEAD AND DISEASED POULTRY COMMERCIAL FARMS

Section 18. G.S. 106-549.72 reads as rewritten:

"**§ 106-549.72. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Q. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATIONS OF THE BIOLOGICAL RESIDUES IN ANIMALS LAW

Section 19. G.S. 106-549.89 reads as rewritten:

"**§ 106-549.89. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

R. CIVIL PENALTY OF NOT MORE THAN $10,000 IMPOSED FOR VIOLATION OF THE HONEY AND BEE ACT AND RULES OF THE COMMISSIONER

Section 20. G.S. 106-644(b) reads as rewritten:

"(b) The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates this Article or a rule adopted to implement this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful means for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

S. CIVIL PENALTIES OF VARIOUS AMOUNTS ASSESSED FOR VIOLATIONS OF THE COMMERCIAL FERTILIZER LAW

Section 21. G.S. 106-665(c) reads as rewritten:

"(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the ~~amount~~ clear proceeds of the penalty assessed shall be ~~paid to the Commissioner who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment."

T. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR VIOLATIONS OF THE STATE BIOLOGICS LAW

Section 22. G.S. 106-715 reads as rewritten:

"**§ 106-715. Civil penalties.**

The Commissioner may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

U. UNSPECIFIED CIVIL PENALTIES ASSESSED FOR VIOLATION OF THE GASOLINE AND OIL INSPECTION LAW

Section 23. (a) G.S. 119-26.1(c) reads as rewritten:

"(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 119-23 reads as rewritten:

"**§ 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.**

Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. ~~All~~ Except as provided in G.S. 119-26.1(c) and G.S. 119-39.1, all moneys received under the authority of this Article shall be paid into the State treasury and the State Treasurer shall place to the credit of the 'State Highway Fund' that proportion of said funds representing inspection fees collected on highway use motor fuels, as certified monthly to the State Treasurer by the Secretary of Revenue, and the remainder of said funds shall be credited to the general fund."

V. CIVIL PENALTIES OF NOT MORE THAN $5,000 MAY BE ASSESSED FOR VIOLATIONS OF THE GASOLINE AND OIL INSPECTION ACT

Section 24. G.S. 119-39.1 reads as rewritten:

"**§ 119-39.1. Civil Penalties.**

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

W. CIVIL PENALTIES NOT TO EXCEED $100.00, $300.00, OR $500.00 ASSESSED FOR VIOLATIONS OF THE LIQUEFIED PETROLEUM GASES LAW

Section 25. G.S. 119-59(c) reads as rewritten:

"(c) Civil Penalty. -- The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed one hundred dollars ($100.00) for the first violation, three hundred dollars ($300.00) for a second violation, and five hundred dollars ($500.00) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation.

The Commissioner may not assess a civil penalty against a person until the Commissioner has notified the person of the alleged violation and has given the person at least 45 days to correct or cease the alleged violation. A notice may be served by any means authorized by G.S. 1A-1, Rule 4. ~~Civil penalties assessed under this subsection shall be credited to the General Fund as nontax revenue.~~ The clear

proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

X. CIVIL PENALTIES OF NOT MORE THAN $500.00 OR $2,000 ASSESSED FOR VIOLATIONS OF THE PESTICIDE LAW

Section 26. (a) G.S. 143-469 is amended by adding a new subsection to read:

"(e) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 143-468(a) reads as rewritten:

"(a) Except as provided in G.S. 143-469 and in subsection (b), all fees and charges received by the Board under this Article shall be credited to the Department of Agriculture and Consumer Services for the purpose of administration and enforcement of this Article."

PART III. DEPARTMENT OF COMMERCE

A. ABC COMMISSION -- PENALTIES UP TO $500.00, $750.00 OR $1,000 ASSESSED ON PERMIT HOLDERS BY THE ABC COMMISSION FOR VIOLATIONS OF ABC LAWS AND REGULATIONS; COMMISSION MAY ALSO ACCEPT A COMPROMISE PENALTY OF NOT MORE THAN $5,000 IN LIEU OF REVOKING OR SUSPENDING A PERMIT

Section 27. G.S. 18B-104(c) reads as rewritten:

"(c) Fines and Penalties to Treasurer. -- ~~All fines and penalties collected under subsections (a) and (b) shall be remitted by the Commission to the State Treasurer for the General Fund.~~ The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. ABC COMMISSION -- MONETARY PENALTY OF UP TO $15,000 AND $35,000 FOR VIOLATING WINE DISTRIBUTION AGREEMENTS LAWS

Section 28. G.S. 18B-1207(c)(4) reads as rewritten:

"(4) Impose a monetary penalty up to fifteen thousand dollars ($15,000) for a first offense and up to thirty-five thousand ($35,000) for the second offense. ~~All monetary penalties imposed by this subsection shall be remitted by the Commission to the State Treasurer for the General Fund.~~ The clear proceeds of monetary penalties imposed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. BANKING COMMISSION -- CIVIL PENALTY OF NOT MORE THAN $500.00 OR $1,000 FOR BANK'S VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDERS

Section 29. G.S. 53-107.1(d) reads as rewritten:

"(d) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) of subsection (a) of this section. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of civil money penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. BANKING COMMISSION -- PENALTY OF NOT MORE THAN $10,000 FOR BANK'S VIOLATION OF ANY LAWFUL ORDERS OF THE COMMISSIONER OR THE BANKING COMMISSION

Section 30. G.S. 53-107.2(b) reads as rewritten:

"(b) Notwithstanding any penalty imposed by the Commissioner of Banks, the Banking Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars ($10,000) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Commission or Commissioner of Banks. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of civil money penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. PENALTY OF $500.00 FOR BANK ADVERTISING LARGER CAPITAL STOCK THAN THAT ACTUALLY PAID IN WITH CASH

Section 31. G.S. 53-133 reads as rewritten:

"**§ 53-133. Advertising larger amount than that paid in capital stock.**

It shall be unlawful for any bank to advertise in a newspaper, letterhead, or any other way, a larger capital stock than has been actually paid in in cash. Any bank violating this section shall be subject to a penalty of five hundred dollars ($500.00) for each and every offense. The penalty herein provided for shall be recovered by the State in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. PENALTY OF $1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER THE BANK HOLDING COMPANY ACT

Section 32. G.S. 53-228 reads as rewritten:

"**§ 53-228. Cease and desist.**

Upon a finding that any action of a bank holding company or nonbank subsidiary subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the bank holding company or its nonbank subsidiary and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the bank holding company or nonbank subsidiary fails to appeal such decision in accordance with G.S. 53-231 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars ($1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a bank holding company's or its nonbank subsidiary's failure to comply with an order of the Commissioner.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. PENALTY OF $1,000 FOR VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER N.C. INTERNATIONAL BANKING ACT

Section 33. G.S. 53-232.16 reads as rewritten:

"**§ 53-232.16. Cease and desist.**

Upon a finding that any action of an international banking corporation or its international banking agency, international banking branch, or international representative office subject to this Article may be in violation of any North Carolina banking law, the Commissioner, after a reasonable notice to the international banking corporation, international bank agency, international bank branch, or international representative office and an opportunity for it to be heard, may order it to cease and desist from the action. If the international banking corporation, international bank agency, international bank branch, or international representative office fails to appeal the decision in accordance with G.S. 53-232.17 and continues to engage in the action in violation of the Commissioner's order to cease and desist the action, it is subject to a penalty of one thousand dollars ($1,000), to be recovered with costs by the Commissioner in any court of competent jurisdiction in a civil action prosecuted by the Commissioner. This penalty is in addition to and not in lieu of any other law applicable to the failure of an international banking corporation, international bank agency, international bank branch, or international representative office to comply with an order of the Commissioner. ~~All civil money penalties collected under this section shall be deposited in the General Fund.~~

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. PENALTY OF $1,000 FOR MORTGAGE BANKERS OR MORTGAGE BROKERS VIOLATING COMMISSIONER'S CEASE AND DESIST ORDER

Section 34. G.S. 53-239(b) reads as rewritten:

"(b) If the mortgage banker or mortgage broker fails to appeal such cease and desist order of the Commissioner in accordance with G.S. 53-240 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars ($1,000) for each such action it takes in violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a mortgage banker or a mortgage broker for the mortgage banker or mortgage broker's failure to comply with an order of the Commissioner.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. PENALTY OF $1,000 FOR EACH ACTION IN VIOLATION OF COMMISSIONER'S CEASE AND DESIST ORDER UNDER REFUND ANTICIPATION LOAN ACT

Section 35. G.S. 53-251(a) reads as reads as rewritten:

"(a) Cease and Desist Order. Upon the finding that any action of a registrant may be in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the Commissioner finds that an action of the registrant is in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall order the registrant to cease and desist from the action.

If the registrant fails to appeal a cease and desist order of the Commissioner in accordance with G.S. 53-252 and continues to engage in an action in violation of the Commissioner's order to cease and desist from the action, the registrant shall be subject to a penalty of one thousand dollars ($1,000) for each action it takes in violation of the Commissioner's order.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $20,000 FOR SAVINGS AND LOANS ASSOCIATIONS' FAILURE TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 36. G.S. 54B-64(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, any association which is found to have violated any provision of this Article may be ordered to forfeit and pay a civil penalty of up to twenty thousand dollars ($20,000). Any association which is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to forfeit or pay a civil penalty of

up to twenty thousand dollars ($20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. SAVINGS AND LOANS ASSOCIATIONS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $5,000 FOR FAILURE OF DIRECTORS, OFFICERS OR EMPLOYEES OF SAVINGS AND LOANS ASSOCIATIONS TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 37. G.S. 54B-65(a) reads as rewritten:

"(a) Any person, whether a director, officer or employee, who is found to have violated any provision of this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars ($5,000) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars ($5,000) per violation for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $20,000 PER VIOLATION PER DAY FOR SAVINGS INSTITUTION'S OR SAVINGS BANK'S FAILURE TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 38. (a) G.S. 54C-77 reads as rewritten:

"**§ 54C-77. Civil penalties; State savings banks.**

(a) Except as otherwise provided in this Article, a savings bank that is found to have violated this Article may be ordered to pay a civil penalty of up to twenty thousand dollars ($20,000). A savings bank that is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to pay a civil penalty of up to twenty thousand dollars ($20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 54C-55(b) reads as rewritten:

"(b) All funds and revenue collected by the Division under this section and all other sections of this Chapter that authorize the collection of fees and other funds shall be deposited with the State Treasurer and expended under the terms of the Executive Budget Act, solely to defray expenses incurred by the office of the Administrator in carrying out its supervisory and auditing functions. ~~Civil penalties collected under this Chapter shall be credited to the General Fund and may be appropriated by the General Assembly for any public purpose.~~"

M. SAVINGS BANKS -- CIVIL PENALTIES ASSESSED BY ADMINISTRATOR UP TO $5,000 PER VIOLATION PER DAY FOR DIRECTORS, OFFICERS, OR EMPLOYEES OF SAVINGS BANK WHO FAIL TO COMPLY WITH STATE LAW OR REGULATION GOVERNING OPERATIONS OR A CEASE AND DESIST ORDER

Section 39. G.S. 54C-78(a) reads as rewritten:

"(a) A person, whether a director, officer, or employee, who is found to have violated this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to pay a civil penalty of up to five thousand dollars ($5,000) per violation. A person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to pay a civil penalty of up to five thousand dollars ($5,000) per violation for each day that the violation or failure to comply continues. ~~All civil penalties, plus interest and cost, that are collected under this subsection shall be deposited into the General Fund of the State treasury.~~ The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

N. FORFEITURE OF $100.00 AGAINST PERSON SELLING ARTICLE WITHOUT REQUIRED INSPECTION

Section 40. G.S. 66-5 reads as rewritten:

"**§ 66-5. Penalty for sale without inspection.**

If any person shall sell any article of forage or provision, of which inspection is required in accordance with this Article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars ($100.00).

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. PENALTY OF $200.00 FOR MASTER OR COMMANDER OF VESSEL TAKING ARTICLES ON BOARD WHICH WERE NOT INSPECTED AS REQUIRED

Section 41. G.S. 66-6 reads as rewritten:

"**§ 66-6. Penalty on master receiving without inspection.**

No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without its being inspected and branded as required, under the penalty of two hundred dollars ($200.00) for each offense.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART IV. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

A. CIVIL PENALTIES NOT TO EXCEED $500.00 OR $5,000 FOR VIOLATIONS OF THE MINING ACT OF 1971

Section 42. G.S. 74-64(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF NOT MORE THAN $5,000 OR $250.00 FOR VIOLATIONS OF ACT CONTROLLING EXPLORATION FOR URANIUM IN NORTH CAROLINA

Section 43. G.S. 74-87(a)(4) reads as rewritten:

"(4) ~~All funds collected pursuant to this section shall be placed in a special fund and shall be used to carry out the purposes of this Article.~~ The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. CIVIL PENALTY OF NOT MORE THAN $100.00 PER VIOLATION ASSESSED FOR VIOLATIONS OF THE WELL CONSTRUCTION ACT

Section 44. G.S. 87-94 is amended by adding a new subsection to read:

"(g) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $100.00 PER DAY ASSESSED FOR VIOLATIONS OF WATER TREATMENT FACILITIES CERTIFICATION LAW

Section 45. G.S. 90A-30(a) reads as rewritten:

"(a) Upon the recommendation of the Board of Certification, the Secretary of Environment and Natural Resources or a delegated representative may impose an administrative, civil penalty on any person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity who violates G.S. 90A-29(a). Each day of a continued violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars ($100.00) for each day such violation continues. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.

The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTY NOT TO EXCEED $1,000 FOR WILLFUL VIOLATION OF LAWS CONCERNING CERTIFICATION OF WASTE MANAGEMENT SYSTEM OPERATORS

Section 46. G.S. 90A-47.5(b) reads as rewritten:

"(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars ($1,000) per violation, for willful violation of the requirements of this Part.

The clear proceeds of civil penalties levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. ADMINISTRATIVE PENALTIES NOT TO EXCEED $10,000 PER DAY FOR VIOLATING RADIATION PROTECTION ACT.

Section 47. (a) G.S. 104E-24 reads as rewritten:

"**§ 104E-24. Administrative penalties.**

(a) The Department may impose an administrative penalty on any person:

(1) Who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;

(2) Who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Environment and Natural Resources a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed ten thousand dollars ($10,000) per day. In determining the amount of the penalty, the Department shall consider the degree and extent of the harm caused by the violation. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 104E-16 reads as rewritten:

"**§ 104E-16. Nonreverting Radiation Protection Fund.**

(a) There is hereby established under the control and direction of the Department a Nonreverting Radiation Protection Fund which shall be used to defray the expenses of any project or activity for:

(1) Emergency response to and decontamination of radiation accidents as provided in G.S. 104E-9(a)(5), or

(2) Perpetual maintenance and custody of radioactive materials as the Department may undertake.

In addition to any moneys that shall be appropriated or otherwise made available to it, the Fund may be maintained by fees, charges, ~~penalties~~ or other moneys paid to or recovered by or on behalf of the Department under the provisions of this ~~Chapter.~~ Chapter, except for the clear proceeds of penalties. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other payments authorized by this ~~Chapter~~ Chapter, except for the clear proceeds of penalties, shall be paid to the Radiation Protection Fund in an amount equal to the sum expended for the projects or activities in subdivisions (1) and (2) above.

(b) Repealed by Session Laws 1987, c. 850, s. 11."

G. FORFEITURE OF BOND GIVEN BY FISHERY LICENSE AGENTS

Section 48. G.S. 113-151.1 is amended by adding a new subsection to read:

"(a1) The clear proceeds of the forfeiture of a license agent's bond pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. FINE OF NOT LESS THAN $100.00 NOR MORE THAN $500.00 FOR VIOLATION OF THE COMMERCIAL AND SPORT FISHERIES LICENSING LAW

Section 49. G.S. 113-162 is amended by adding a new subsection to read:

"(c) The clear proceeds of fines assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. PENALTY NOT TO EXCEED $1,000 PER DAY FOR KNOWINGLY AND WILLFULLY VIOLATING THE OIL AND GAS CONSERVATION ACT

Section 50. G.S. 113-410 reads as rewritten:

"**§ 113-410. Penalties for other violations.**

Any person who knowingly and willfully violates any provision of this law, or any rule or order of the Department made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars ($1,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provisions of this law, or any rule or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person.

The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. PROCEEDS FROM FORFEITURE AND SALE OF CONTRABAND OIL, GAS AND PRODUCT

Section 51. G.S. 113-412 reads as rewritten:

"**§ 113-412. Seizure and sale of contraband oil, gas and product.**

Apart from, and in addition to, any other remedy or procedure which may be available to the Department, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and ~~sold, and the proceeds applied as herein provided.~~ sold. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Department believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal

product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Department or any agent of the Department as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for ~~payment of the proceeds of the sale into the general fund of the State Treasurer, after first deducting the costs in connection with the proceedings and the sale.~~ the clear proceeds of the sales to be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, rules, and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character."

K. CIVIL PENALTIES IMPOSED FOR FAILURE TO COMPLY WITH SEDIMENTATION CONTROL LAWS

Section 52. G.S. 113A-64(a)(5) reads as rewritten:

"(5) ~~Civil~~ The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be ~~credited to the General Fund as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

L. DIVISION OF COASTAL MANAGEMENT -- CIVIL PENALTIES OF NOT MORE THAN $250.00 AND $2,500 ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS ESTABLISHING COASTAL MANAGEMENT STANDARDS

Section 53. (a) G.S. 113A-126(d) is amended by adding a new subdivision to read:

"(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) Section 5 of Chapter 839 of the 1991 Session Laws is repealed.

M. ADMINISTRATIVE PENALTIES IMPOSED FOR VIOLATIONS OF SOLID WASTE (NONHAZARDOUS/MEDICAL) MANAGEMENT REGULATIONS NOT TO EXCEED $5,000, $25,000, OR $50,000 PER DAY DEPENDING UPON EXTENT OF VIOLATION/DIVISION OF ENVIRONMENTAL HEALTH -- CIVIL PENALTIES NOT TO EXCEED $25,000 PER DAY ASSESSED FOR VIOLATIONS OF STATE LAWS AND REGULATIONS GOVERNING OPERATION OF PUBLIC WATER SYSTEMS/EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED $1,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS MANAGEMENT REGULATIONS -- EPIDEMIOLOGY BRANCH -- ADMINISTRATIVE PENALTIES NOT TO EXCEED $10,000 PER DAY IMPOSED FOR VIOLATIONS OF ASBESTOS NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) FOR DEMOLITION AND RENOVATION/ADMINISTRATIVE PENALTY NOT TO EXCEED EITHER $50.00 OR $300.00 PER DAY FOR VIOLATING WASTEWATER SYSTEMS LAW/DIVISION OF MATERNAL AND CHILD HEALTH -- MONETARY PENALTY ON VENDOR WHO VIOLATES COMMISSION'S RULES REGARDING THE WOMEN, INFANTS, AND CHILDREN (WIC) PROGRAM

Section 54. (a) G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars ($5,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed twenty-five thousand

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 of Environment and Natural Resources 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.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article.

(c) The Secretary of Environment and Natural Resources 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 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.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 130A-306 reads as rewritten:

"**§ 130A-306. Emergency Response Fund.**

There is established under the control and direction of the Department, an Emergency Response Fund which shall be a nonreverting fund consisting of any money appropriated for such purpose by the General Assembly or available to it from grants, fees, charges, and other money paid to or recovered by or on behalf of the Department pursuant to this Article, except fees and penalties specifically

designated by this Article for some other use or purpose. The Emergency Response Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used to defray expenses incurred by the Department in developing and implementing an emergency hazardous waste remedial plan and to reimburse any federal, State or local agency and any agent or contractor for expenses incurred in developing and implementing such a plan that has been approved by the Department. These funds shall be used upon a determination that sufficient funds or corrective action cannot be obtained from other sources without incurring a delay that would significantly increase the threat to life or risk of damage to the environment. This Fund may not exceed five hundred thousand dollars ($500,000); money in excess of five hundred thousand dollars ($500,000) shall be deposited in the Inactive Hazardous Sites Cleanup Fund. The Secretary is authorized to take the necessary action to recover all costs incurred by the State for site investigation and the development and implementation of an emergency hazardous waste remedial plan, including attorney's fees and other expenses of bringing the cost recovery action from the responsible party or parties. The provisions of G.S. 130A-310.7 shall apply to actions to recover costs under this section except that: (i) reimbursement shall be to the Emergency Response Fund and (ii) the State need not show that it has complied with the provisions of Part 3 of this Article."

N. CIVIL PENALTY OF $50.00 FOR KNOWINGLY DISPOSING OF TIRE IMPROPERLY

Section 55. G.S. 130A-309.62 reads as rewritten:

"**§ 130A-309.62. Fines and penalties.**

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each tire hauled or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

O. CIVIL PENALTY NOT TO EXCEED $50.00 PER VIOLATION AGAINST PERSONS KNOWINGLY DISPOSING OF LEAD-ACID BATTERIES IN VIOLATION OF SECTION

Section 56. G.S. 130A-309.70(c) reads as rewritten:

"(c) Any person who knowingly places or disposes of a lead-acid battery in violation of this section shall be assessed a civil penalty of not more than fifty dollars ($50.00) per violation. Each battery improperly disposed of shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

P. CIVIL PENALTY NOT TO EXCEED $50.00 PER DAY AGAINST PERSON FAILING TO POST NOTICES CONCERNING RECYCLING AND DISPOSING OF LEAD-ACID BATTERIES

Section 57. G.S. 130A-309.71(c) reads as rewritten:

"(c) Any person who fails to post the notice required by subsection (b) of this section after receiving a written warning from the Department to do so shall be assessed a civil penalty of not more than fifty dollars ($50.00) per day for each day the person fails to post the required notice.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Q. CIVIL PENALTY OF $50.00 PER VIOLATION AGAINST WHOLESALERS WHO REFUSE TO ACCEPT LEAD-ACID BATTERIES FROM CUSTOMERS

Section 58. G.S. 130A-309.72(b) reads as rewritten:

"(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of collection within 90 days shall constitute a separate violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

R. CIVIL PENALTY UP TO $100.00 FOR IMPROPER DISPOSAL OF WHITE GOODS

Section 59. G.S. 130A-309.84 reads as rewritten:

"**§ 130A-309.84. Civil penalties for improper disposal.**

The Department may assess a civil penalty of not more than one hundred dollars ($100.00) against a person who, knowing it is unlawful, places or otherwise disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may assess this penalty for the day the unlawful disposal occurs and each following day until the white good is disposed of properly.

The Department may assess a penalty of up to one hundred dollars ($100.00) against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. The Department may assess this penalty for the day the failure occurs and each following day until the chlorofluorocarbon refrigerants are removed.

~~Civil penalties collected under this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

S. AIR AND WATER QUALITY -- CIVIL PENALTIES OF NOT MORE THAN $25,000 OR $50,000 FOR VIOLATION AND AN ADDITIONAL $25,000 OR

$50,000 FOR EACH ADDITIONAL DAY VIOLATION CONTINUES ASSESSED FOR UNLAWFUL DISPOSAL OF MEDICAL WASTE

Section 60. G.S. 143-214.2A(b) is amended by adding a new subdivision to read:

"(7) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

T. INFRACTION PENALTY OF $10.00 FOR USING PROHIBITED CLEANING AGENTS WHICH CONTAIN PHOSPHORUS

Section 61. G.S. 143-214.4(g) reads as rewritten:

"(g) Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars ($10.00). Notwithstanding G.S. 143-3.1(a), the clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

U. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.6A(a)(7) & (e) AGAINST LOCAL GOVERNMENTS AND PERSONS WHO FAIL TO FOLLOW LAWS CONCERNING WATER SUPPLY WATERSHEDS

Section 62. G.S. 143-214.5(g) reads as rewritten:

"(g) Civil Penalties. -- A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

V. CIVIL PENALTIES OF NOT MORE THAN $10,000 OR $10,000 PER DAY OR $10,000 PER MONTH FOR VARIOUS WATER POLLUTION CONTROL VIOLATIONS

Section 63. G.S. 143-215.6A is amended by adding a new subsection to read:

"(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

W. CIVIL PENALTY OF VARIOUS AMOUNTS FOR VIOLATIONS OF REGULATIONS FOR USE OF WATER RESOURCES

Section 64. G.S. 143-215.17(b) is amended by adding a new subdivision to read:

"(8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

X. LAND RESOURCES DIVISION -- CIVIL PENALTIES NOT TO EXCEED $100.00 OR $500.00 ASSESSED FOR VIOLATIONS OF THE DAM SAFETY LAW. IF WILLFUL, NOT TO EXCEED $500.00 PER DAY FOR EACH DAY OF VIOLATION

Section 65. G.S. 143-215.36(b) is amended by adding a new subdivision to read:

"(8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Y. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATING AIR AND WATER QUALITY REPORTING REGULATIONS

Section 66. G.S. 143-215.69(b) reads as rewritten:

"(b) Civil Penalties. -- The Commission may assess a civil penalty against a person who violates this Part or a rule of the Commission implementing this Part. For persons subject to the provisions of G.S. 143-215.1, the amount of the penalty shall not exceed the maximum imposed in G.S. 143-215.6A and shall be assessed in accordance with the procedure set out in G.S. 143-215.6A for assessing a civil penalty. For persons subject to the provisions of Title V, G.S. 143-215.108, or G.S. 143-215.109, the amount of penalty shall not exceed the maximum imposed in G.S. 143-215.114A and shall be assessed in accordance with the procedure set out in G.S. 143-215.114A for assessing a civil penalty. ~~Civil~~ The clear proceeds of civil penalties assessed under this subsection shall be ~~credited to the General Fund as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Z. OIL POLLUTION AND HAZARDOUS SUBSTANCES CONTROL -- CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED FOR UNLAWFUL DISCHARGE OF OIL

Section 67. (a) G.S. 143-215.88A is amended by adding a new subsection to read:

"(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 143-215.87 reads as rewritten:

"**§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.**

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State; to assess damages for injury to, destruction of, or loss of use of natural resources; and to develop and implement plans for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources injured by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, ~~penalties~~ or other moneys except for the clear proceeds of civil penalties paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, ~~penalties~~ or other payments as damages authorized by this Part except for the clear proceeds of civil penalties shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. ~~Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties.~~

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

AA. CIVIL PENALTY ASSESSED PURSUANT TO G.S. 143-215.94K AGAINST OWNER OR OPERATOR OF COMMERCIAL UNDERGROUND STORAGE TANK WHO FAILS TO PROPERLY COMMENCE AND COMPLETE CLOSURE

Section 68. G.S. 143-215.94E(i) reads as rewritten:

"(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94K. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

BB. CIVIL PENALTY OF NOT MORE THAN $10,000 FOR VIOLATING UNDERGROUND STORAGE TANK REGULATIONS. IF VIOLATION IS CONTINUOUS, MAY ASSESS $10,000 PER DAY NOT TO EXCEED $200,000

Section 69. G.S. 143-215.94W is amended by adding a new subsection to read:

"(h) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

CC. CIVIL PENALTY OF EITHER $50,000 OR $250,000 PER DAY FOR FAILURE TO IMMEDIATELY REPORT AN OFFSHORE DISCHARGE

Section 70. G.S. 143-215.94GG is amended by adding a new subsection to read:

"(c) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

DD. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATIONS OF OIL REFINING FACILITY PERMIT LAWS AND REGULATIONS

Section 71. G.S. 143-215.102(a) reads as rewritten:

"(a) Civil Penalty. -- Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for every such violation, the amount to be determined by the Secretary after taking into consideration the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment, or requests remission of the assessment in whole or in part as provided in G.S. 143-215.6. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

~~Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund as established by this Article.~~ The clear proceeds of civil penalties

provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

EE. FORFEITURE OF BONDS FOR NONCOMPLIANCE WITH SPECIAL ORDERS CONCERNING AIR POLLUTION CONTROL

Section 72. G.S. 143-215.110(e) reads as rewritten:

"(e) Compliance Bonds. -- A special order or other instrument authorized by this section may provide that a bond or other surety be posted to ensure compliance. In determining the amount of such bond the Commission shall consider the degree and extent of harm which may result if the person to whom the special order is directed fails to comply with the terms of the order, the cost of rectifying such harm, the economic consequences to the person to whom the special order is directed if the special order is issued as compared to the consequences of a denial, suspension, or revocation of the special order or permit, and the person's history of compliance with pollution control requirements, other special orders, history of payment of any penalties which may have been previously assessed by the Commission. In the event of noncompliance with the special order or other instrument, the bond shall be forfeited and the ~~entire amount of the bond shall be deposited in the General Fund.~~ clear proceeds of the bond shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

FF. CIVIL PENALTY OF NOT MORE THAN $10,000 FOR VARIOUS AIR POLLUTION CONTROL VIOLATIONS

Section 73. G.S. 143-215.114A is amended by adding a new subsection to read:

"(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART V. DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. CIVIL PENALTIES OF NOT MORE THAN $20,000 AND $75,000 FOR CIRCUMVENTION OF THE SELF-REFERRALS BY HEALTH CARE PROVIDERS LAW

Section 74. G.S. 90-407 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY NOT TO EXCEED $1,000 IMPOSED UPON CHILD DAY CARE FACILITIES OR HOMES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE/STANDARDS

Section 75. G.S. 110-103.1 is amended by adding a new subsection to read:

"(d) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. CIVIL PENALTIES OF $100.00 OR $500.00 OR $1,000 FOR FAILURE OF PAYORS/EMPLOYERS TO COMPLY WITH EMPLOYEE'S CHILD SUPPORT ENFORCEMENT ORDERS

Section 76. G.S. 110-136.8(e) reads as rewritten:

"(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil ~~penalty to be paid to the county school fund.~~ penalty. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54 of this section.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTY NOT TO EXCEED $100.00 PER VIOLATION FOR WILLFUL VIOLATION OF PROVISIONS FOR CERTIFICATION OF ADULT DAY CARE PROGRAM

Section 77. G.S. 131D-6(c) reads as rewritten:

"(c) The Secretary may impose a civil penalty not to exceed one hundred dollars ($100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF VARYING AMOUNTS IMPOSED UPON ADULT CARE HOMES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS/ADMINISTRATIVE AND CIVIL PENALTIES OF VARIOUS AMOUNTS IMPOSED UPON NURSING FACILITIES FOR VIOLATIONS OF STATE LAW OR REGULATION GOVERNING LICENSURE AND STANDARDS

Section 78. (a) G.S. 131D-34 is amended by adding a new subsection to read:

"(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 131E-129 is amended by adding a new subsection to read:

"(h) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(c) G.S. 131E-109 is amended by adding a new subsection to read:

"(e) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(d) G.S. 131E-242(a) reads as rewritten:

"(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of ~~G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and~~ G.S. 131D-2 ~~and G.S. 131D-34~~ for adult care homes."

F. CIVIL PENALTY OF $50.00 PER DAY UP TO $1,500 PER VIOLATION AGAINST NURSING HOMES FOR NOT GIVING FIRST AVAILABLE BED TO PATIENT WHO LEFT FOR TEMPORARY TREATMENT

Section 79. G.S. 131E-130(b) reads as rewritten:

"(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars ($50.00) a day, up to a maximum of one thousand five hundred dollars ($1,500), against the nursing home, for each violation.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CIVIL PENALTIES OF NOT MORE THAN $20,000 IMPOSED FOR VIOLATIONS OF STATE LAW OR REGULATION REQUIRING ISSUANCE OF AND COMPLIANCE WITH CERTIFICATES OF NEED

Section 80. G.S. 131E-190(f) reads as rewritten:

"(f) The Department may assess a civil penalty of not more than twenty thousand dollars ($20,000) against any person who knowingly offers or develops any new institutional health service within the meaning of this Article without a certificate of need issued under this Article and the rules pertaining thereto, or in violation of the

terms or conditions of such a certificate, whenever it determines a violation has occurred and each time the service is provided in violation of this provision. In determining the amount of the penalty the Department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Department shall refer the matter to the Attorney General for collection. For the purpose of this subsection, the word 'person' shall not include an individual in his capacity as an officer, director, or employee of a person as otherwise defined in this Article.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE SOLICITATIONS OF CONTRIBUTIONS LAW NOT TO EXCEED $1,000 PER ACT OR OMISSION

Section 81. G.S. 131F-23(g) reads as rewritten:

"(g) Disposition of Penalties. -- ~~Penalties collected by the Department under subsection (e) of this section shall be credited to the General Fund as nontax revenue.~~ The clear proceeds of penalties provided for in subsection (e) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTIES NOT TO EXCEED $10,000 FOR VIOLATION OF THE SOLICITATIONS OF CONTRIBUTIONS LAW

Section 82. G.S. 131F-24(a) reads as rewritten:

"(a) Civil Remedies. -- In addition to other remedies authorized by law, the Attorney General may bring a civil action in superior court to enforce this Chapter. Upon a finding that any person has violated this Chapter, a court may make any necessary order or enter a judgment, including a temporary or permanent injunction, a declaratory judgment, the appointment of a master or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions in accordance with the charitable or sponsor purpose expressed in the registration statement or in accordance with the representations made to the person solicited, the reimbursement of the Department for attorneys' fees and costs, including investigative costs, and any other equitable relief the court finds appropriate. Upon a finding that any person has violated any provision of this Chapter, a court may enter an order imposing a civil penalty in an amount not to exceed ten thousand dollars ($10,000) per violation.

The clear proceeds of penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VI. DEPARTMENT OF INSURANCE

A. PENALTIES OF NOT LESS THAN $100.00 NOR MORE THAN $1,000 ASSESSED AGAINST INSURANCE COMPANIES FOR FAILURE TO COMPLY WITH STATE LAWS AND REGULATIONS/COMMISSIONER MAY IMPOSE A CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IF INSURER FAILS TO NOTICE A CLAIM WITHIN 30 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE CLAIM/ANY INSURER WILLFULLY MISREPRESENTING TERMS, CONDITIONS, OR BENEFITS OF A POLICY IS SUBJECT TO THE PENALTY PROVISIONS OF G.S. 58-2-70/CIVIL PENALTY OF NO MORE THAN $2,000, PURSUANT TO G.S. 58-2-70 FOR INSURERS REFUSING TO PAY CLAIMANTS BECAUSE OF REPAIR SERVICE CHOSEN/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATING REINSURANCE INTERMEDIARIES LAW/CIVIL PENALTY AS PROVIDED IN G.S. 58-21-105 FOR SURPLUS LINES LICENSEE OR PRODUCING BROKER WHO FAILS TO PRODUCE PROPER EVIDENCE OF INSURANCE/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATING THE SURPLUS LINES ACT/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR KNOWINGLY AND WILLFULLY VIOLATING COMMISSIONER'S ORDERS FOR INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION/CIVIL PENALTY PURSUANT TO G.S. 58-2-70(d) IMPOSED AGAINST INSURANCE MANAGING GENERAL AGENT WHO HAS NOT MATERIALLY COMPLIED WITH AGENCY AND MANAGEMENT CONTRACTS LAWS/CIVIL PENALTY PURSUANT TO G.S. 58-2-70 IMPOSED FOR VIOLATION OF INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

Section 83. (a) G.S. 58-2-70(d) reads as rewritten:

"(d) Upon a finding by the Commissioner of a violation as specified in subsection (c) of this section, the Commissioner shall direct the payment of a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. ~~The penalty shall be payable to the Commissioner, who shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State.~~ The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State."

(b) G.S. 58-6-1 reads as rewritten:

"**§ 58-6-1. Commissioner to report ~~taxes, fees, and civil penalties~~ taxes and fees and pay monthly.**

On or before the 10th day of each month the Commissioner shall furnish to the Auditor a statement in detail of the ~~taxes, fees, and civil penalties~~ taxes and fees received during the previous month, and shall pay the amounts received to the Treasurer. Except as otherwise provided, the amounts shall be credited to the

General Fund. The Auditor may examine the accounts of the Commissioner and check them up with said statement."

B. CIVIL PENALTY OF $100.00 PER DAY NOT TO EXCEED $1,000 FOR VIOLATING INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Section 84. G.S. 58-19-50(a) reads as rewritten:

"(a) Any person failing, without just cause, to file any registration statement as required in this Article shall pay, after notice and hearing, a civil penalty of one hundred dollars ($100.00) for each day's delay, not to exceed a total penalty of one thousand dollars ($1,000), to the ~~Commissioner, who shall forward the clear proceeds to the General Fund of this State.~~ Commissioner. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. PENALTY OF $1,000 FOR PERSON WHO PLACES SURPLUS LINES INSURANCE WITHOUT A VALID SURPLUS LINES LICENSE IN EFFECT

Section 85. G.S. 58-21-65(d) reads as rewritten:

"(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars ($1,000) and be subject to such other penalties as provided by law.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTY NOT TO EXCEED $10,000 FOR VIOLATING COMMISSIONER'S SUPERVISORY ORDERS

Section 86. G.S. 58-30-60(h) reads as rewritten:

"(h) If any person violates any supervision order issued under this section that as to him is then still in effect, he shall be liable to pay a civil penalty imposed by the Court not to exceed ten thousand dollars ($10,000). The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. FORFEITURE OF $1,000 OR $5,000 FOR VIOLATING COMMISSION'S FINAL ORDER ABOUT REGULATION OF CREDIT LIFE INSURANCE

Section 87. G.S. 58-57-80 reads as rewritten:

"**§ 58-57-80. Penalties.**

In addition to any other penalty provided by law, any person, firm or corporation which willfully violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court,

forfeit and pay to the State of North Carolina a sum not to exceed one thousand dollars ($1,000) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed five thousand dollars ($5,000). The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such willful violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in G.S. 58-57-75. Any creditor who requires credit life insurance or credit accident and health insurance, or both, in excess of the amounts set forth in G.S. 58-57-15 or who violates the provisions of G.S. 58-57-65 shall be guilty of a Class 3 misdemeanor, the penalty for which shall only be a fine of two thousand dollars ($2,000) for each such occurrence or violation."

F. MONETARY FORFEITURE NOT LESS THAN $1,000 NOR MORE THAN $5,000 FOR FAILURE TO COMPLY WITH CEASE AND DESIST ORDER CONCERNING UNFAIR TRADE PRACTICE

Section 88. G.S. 58-63-50 reads as rewritten:

"**§ 58-63-50. Penalty.**

Any person who willfully violates a cease and desist order of the Commissioner under G.S. 58-63-32, after it has become final, and while the order is in effect, shall forfeit and pay to the Commissioner ~~for the use of the public schools of the county or counties in which the act or acts complained of occurred~~ the sum of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation, which if not paid shall be recovered in a civil action instituted in the name of the Commissioner in the Superior Court of Wake County. The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. PENALTY OF NOT LESS THAN $100.00 OR GREATER THAN $2,000 AGAINST COLLECTION AGENCIES FOR VIOLATING COLLECTION OF DEBT RULES

Section 89. (a) G.S. 58-70-130 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties imposed under this section in suits instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 58-39-95 is amended by adding a new subsection to read:

"(c) The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. CIVIL PENALTIES OF $250.00 ASSESSED FOR VIOLATION OF BAIL BONDSMEN AND RUNNERS LAW

Section 90. G.S. 58-71-80(b) reads as rewritten:

"(b) The Commissioner, in lieu of revoking or suspending a license in accordance with the provisions of this Article, may, in any one proceeding, by order, require the licensee to pay ~~to the school fund in the licensee's county of residence~~ a civil penalty of two hundred fifty dollars ($250.00) for each offense. The Commissioner shall remit the clear proceeds of these civil penalties to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Upon the licensee's failure to pay the penalty within 20 days after the order is mailed, postage prepaid, registered and addressed to the licensee's last known place of business, unless the order is stayed by an order of the court of competent jurisdiction or unless the Commissioner has already suspended or revoked the license of the licensee, the Commissioner may revoke the license or may suspend the license for any period."

I. FORFEITURE OF $500.00 FOR OFFICER ACTING WITHOUT BOND

Section 91. G.S. 58-72-5 reads as rewritten:

"**§ 58-72-5. Penalty for officer acting without bond.**

Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars ($500.00) to the use of the State for each attempt so to exercise his office. The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTY NOT LESS THAN $100.00 NOR MORE THAN $500.00 FOR VIOLATING MANUFACTURED HOMES WARRANTIES LAW

Section 92. G.S. 143-143.13(c) reads as rewritten:

"(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board also has the authority to impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall direct the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the ~~Board, which shall then forward the clear proceeds of which to the State Treasurer for deposit in the General Fund of the State.~~ Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty."

K. CIVIL PENALTIES NOT TO EXCEED $1,000 PER VIOLATION IMPOSED FOR VIOLATIONS OF THE UNIFORM STANDARDS FOR MANUFACTURED HOMES

Section 93. G.S. 143-151(a) reads as rewritten:

"(a) Whoever violates (i) the provisions of this Article; or (ii) any rules promulgated under this Article, shall be liable for civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each such violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year from the date of the first violation. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VII. DEPARTMENT OF JUSTICE

A. CIVIL PENALTY OF $100.00 IMPOSED AGAINST JUDGMENT CREDITOR FAILING TO FILE NOTICE OF RECEIPT OF PAYMENT WITH CLERK OF SUPERIOR COURT

Section 94. G.S. 1-239(c) reads as rewritten:

"(c) Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, and the clerk shall thereafter promptly enter the payment on the judgment docket of the court, and the clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars ($100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. FINE NOT TO EXCEED $2,000 PAID TO COURT FOR UNLAWFULLY WITHHOLDING TITLE TO AN OFFICE (QUO WARRANTO)

Section 95. G.S. 1-527 reads as rewritten:

"§ 1-527. Judgment in such actions.

In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice requires. When the defendant, whether a natural person or corporation, against whom the action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against him. The court may also, in its discretion, fine the defendant a sum not exceeding two thousand dollars ($2000). The clear proceeds of the fine shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. COURT MAY ASSESS CIVIL PENALTIES AGAINST ANYONE OPERATING A PYRAMID OR CHAIN SCHEME IN VIOLATION OF LOTTERY AND GAMING LAWS

Section 96. G.S. 14-291.2(c) reads as rewritten:

"(c) Any judge of the superior court shall have jurisdiction, upon petition by the Attorney General of North Carolina or district attorney of the superior court, to enjoin, as an unfair or deceptive trade practice, the continuation of the scheme described in subsection (a); in such proceeding the court may assess civil penalties and attorneys' fees to the Attorney General or the District Attorney pursuant to G.S. 75-15.2 and 75-16.1; and the court may appoint a receiver to secure and distribute assets obtained by any defendant through participation in any such scheme. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $25,000 ASSESSED FOR VIOLATIONS OF THE INVENTION DEVELOPMENT SERVICES LAW

Section 97. G.S. 66-216 reads as rewritten:

"§ 66-216. Enforcement.

The Attorney General shall enforce this Article and may recover a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of this Article and may seek equitable relief to restrain the violation of this Article. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

E. CIVIL PENALTIES OF NOT MORE THAN $2,000 ASSESSED FOR VIOLATION OF LAWS AND REGULATIONS GOVERNING PRIVATE PROTECTIVE SERVICES

Section 98. G.S. 74C-17(c) reads as rewritten:

"(c) In lieu of revocation or suspension of a license or permit under G.S. 74C-12, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person or business who violates any provision of this Chapter or any rule of the Board adopted pursuant to this Chapter. In determining the amount

of any penalty, the Board shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $5,000 ASSESSED BY THE COURTS FOR KNOWING VIOLATIONS OF MONOPOLIES, TRUSTS, AND CONSUMER PROTECTION LAWS OR RELATED COURT ORDERS

Section 99. G.S. 75-15.2 reads as rewritten:

"§ 75-15.2. Civil penalty.

In any suit instituted by the Attorney General, in which the defendant is found to have violated G.S. 75-1.1 and the acts or practices which constituted the violation were, when committed, knowingly violative of a statute, the court may, in its discretion, impose a civil penalty against the defendant of up to five thousand dollars ($5,000) for each violation. In any action brought by the Attorney General pursuant to this Chapter in which it is shown that an action or practice when committed was specifically prohibited by a court order, the Court may, in its discretion, impose a civil penalty of up to five thousand dollars ($5,000) for each violation. Civil penalties may be imposed in a new action or by motion in an earlier action, whether or not such earlier action has been concluded. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. ~~Any penalty so assessed shall be paid to the General Fund of the State of North Carolina.~~ The clear proceeds of penalties so assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. FINE UP TO $2,000 PER PERSON FOR LENDER REQUIRING BORROWER TO DEAL WITH A PARTICULAR INSURER OR FOR APPROVING INSURER ON DISCRIMINATORY BASIS

Section 100. G.S. 75-19 reads as rewritten:

"§ 75-19. Violators subject to fine and injunction.

The superior court, on complaint by any person that G.S. 75- 17 or 75-18 is being violated, may issue an injunction against such violation and may fine all persons, firms, corporations, and officers, directors, trustees, agents, employees, or affiliates of such up to two thousand dollars ($2,000) per person for such violation. In event of a disregard of such injunction or other court order, the superior court shall hold such parties in contempt and prescribe such further penalties as the court in its discretion shall so determine. The clear proceeds of fines provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. CIVIL PENALTY NOT TO EXCEED $2,000 FOR DEBT COLLECTORS WHO ATTEMPT TO COLLECT DEBTS IN UNAUTHORIZED MANNER

Section 101. G.S. 75-56 reads as rewritten:

"**§ 75-56. Application.**

The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of two thousand dollars ($2,000) shall not be imposed, nor shall damages be trebled for any violation under this Article. The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTY OF $1,000 FOR KNOWINGLY INDUCING OR ATTEMPTING TO INDUCE SOMEONE TO VIOLATE THE MOTOR FUEL MARKETING ACT

Section 102. G.S. 75-83 reads as rewritten:

"**§ 75-83. Unlawful inducement; civil penalty.**

It shall be unlawful to knowingly induce, or to knowingly attempt to induce, a violation of this Article, whether by otherwise lawful or unlawful means. In any action initiated by the Attorney General, anyone found to have violated this provision shall be subject to the civil penalty applicable to the sales made in violation of this Article; or, if no sales were made, to a civil penalty of one thousand dollars ($1,000). The clear proceeds of any civil penalties imposed in any actions initiated by the Attorney General under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

J. CIVIL PENALTY OF NOT MORE THAN $1,000 PER OFFENSE FOR ESTABLISHING A PRICE IN VIOLATION OF THE MOTOR FUEL MARKETING ACT

Section 103. G.S. 75-84 reads as rewritten:

"**§ 75-84. Separate offenses; injunctions.**

Each act of establishing a price in violation of this Article shall constitute a separate offense by the seller and the civil penalty for each offense shall be not more than one thousand dollars ($1,000). Upon a proper showing by the Attorney General or his delegate, further violations may be temporarily or permanently enjoined.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

K. ATTORNEY GENERAL MAY SEEK CIVIL PENALTIES FOR VIOLATIONS OF THE MOTOR FUEL MARKETING ACT

Section 104. G.S. 75-85 reads as rewritten:

"**§ 75-85. Investigations by Attorney General.**

The Attorney General is authorized to investigate any allegation of a violation of this Article made by a motor fuel merchant or by an association or group of motor fuel merchants. If an investigation discloses a violation, the Attorney General may exercise the authority under this Article to seek an injunction and he may also seek civil penalties. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

L. CIVIL PENALTIES OF NOT MORE THAN $100,000 ASSESSED BY THE COURTS FOR UNLAWFUL ACTIVITIES IN CONNECTION WITH CERTAIN CORPORATE TRANSACTIONS; COURT MAY TREBLE PENALTY IF CONDUCT IS WILLFUL

Section 105. G.S. 75E-5 reads as rewritten:

"**§ 75E-5. Civil penalties.**

In any suit instituted by the Attorney General in which the defendant is found to have violated G.S. 75E-2, the court may, in its discretion, impose a civil penalty against the defendant of not more than one hundred thousand dollars ($100,000) for each violation; provided that, if the court shall determine that such violation was willful, it may in its discretion treble such penalty; provided, further, that in either of the foregoing circumstances, the court may in its discretion award to the Attorney General costs and reasonable attorneys' fees. ~~Any penalty assessed pursuant to this section shall be paid to the General Fund of the State of North Carolina.~~ The clear proceeds of any penalty assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

M. CIVIL PENALTIES AND FORFEITURE OF PERSONAL AND REAL PROPERTY AUTHORIZED IN NUISANCE ACTIONS

Section 106. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such

activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART VIII. DEPARTMENT OF LABOR

A. CIVIL PENALTIES PURSUANT TO G.S. 95-25.23 FOR PERSONS REQUIRED TO COMPLY WITH FAIR LABOR STANDARDS ACT WHO VIOLATE N.C. YOUTH EMPLOYMENT LAW/YOUTH EMPLOYMENT -- CIVIL PENALTIES NOT TO EXCEED $250.00 PER VIOLATION ASSESSED AGAINST EMPLOYERS FOR VIOLATING YOUTH EMPLOYMENT LAWS

Section 107. G.S. 95-25.23(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund of the State treasury.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF UP TO $250.00 PER EMPLOYEE NOT TO EXCEED $1,000 PER INVESTIGATION FOR VIOLATING RECORD-KEEPING REQUIREMENTS OF WAGE AND HOUR ACT

Section 108. G.S. 95-25.23A(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. PRIVATE PERSONNEL SERVICES -- FINES UP TO $250.00 AND CIVIL PENALTIES NOT LESS THAN $50.00 NOR MORE THAN $100.00 PER DAY, UP

TO $2,000 IMPOSED UPON SERVICES WHICH VIOLATE LAW OR RULES OR OPERATES WITHOUT A LICENSE/CIVIL PENALTIES (LIKE THAT IMPOSED IN G.S. 95-47.9(e)) IMPOSED FOR OPERATING A JOB-LISTING SERVICE WITHOUT A VALID LICENSE

Section 109. G.S. 95-47.9(e) reads as rewritten:

"(e) Any person who operates as a private personnel service without first obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) for each day the private personnel service operates without a license, the penalty not to exceed a total of two thousand dollars ($2,000). Actions to recover civil penalties shall be initiated by the Attorney ~~General and any such penalties collected shall be deposited to the general fund.~~ General. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. CIVIL PENALTIES NOT TO EXCEED $1,000 PER DAY OR NOT TO EXCEED $1,000 ASSESSED FOR VIOLATIONS OF THE AMUSEMENT DEVICE SAFETY ACT

Section 110. G.S. 95-111.4(17) reads as rewritten:

"(17) To order the payment of all civil penalties provided by this Article. ~~Funds~~ The clear proceeds of funds collected pursuant to a civil penalty order shall be ~~deposited with the State Treasurer;~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2; and".

E. OSHA -- CIVIL PENALTIES OF $7,000 AND CIVIL PENALTIES NOT LESS THAN $5,000 NOR GREATER THAN $70,000 ASSESSED AGAINST EMPLOYERS FOR OSHA VIOLATIONS

Section 111. G.S. 95-138(b) reads as rewritten:

"(b) ~~All~~ The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be ~~paid into the general fund of the State treasury.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

F. CIVIL PENALTIES OF NOT MORE THAN $1,000 ASSESSED FOR VIOLATIONS OF THE LAWS CONCERNING IDENTIFICATION OF TOXIC OR HAZARDOUS SUBSTANCES/CIVIL PENALTIES (AS PROVIDED IN G.S. 95-195(c)) ASSESSED AGAINST EMPLOYER WHICH REFUSES TO LIST CHEMICALS USED OR STORED AT THE EMPLOYMENT FACILITY

Section 112. G.S. 95-195(c) reads as rewritten:

"(c) If the Commissioner of Labor finds that the employer violated this Article, the Commissioner shall order the employer to comply within 14 days following receipt of written notification of the violation. Employers not complying within 14 days following receipt of written notification of a violation shall be subject to civil

penalties of not more than one thousand dollars ($1,000) per violation imposed by the Commissioner of Labor. There shall be a separate offense for each day the violation continues. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

G. CONTROLLED SUBSTANCES EXAMINATION ACT -- CIVIL PENALTY UP TO $250.00 PER EXAMINEE NOT TO EXCEED $1,000 PER INVESTIGATION ASSESSED AGAINST EXAMINEES WHO VIOLATE CSE ACT

Section 113. G.S. 95-234(c) reads as rewritten:

"(c) ~~Sums collected under this section by the Commissioner shall be paid into the General Fund.~~ The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

H. $25.00 CIVIL PENALTY FOR EMPLOYER FAILING TO NOTIFY THE INDUSTRIAL COMMISSION AND EMPLOYEE WHEN WORKERS' COMPENSATION FINAL PAYMENT HAS BEEN MADE

Section 114. G.S. 97-18(h) reads as rewritten:

"(h) Within 16 days after final payment of compensation has been made, the employer shall send to the Commission and the employee a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Commission or the employee within such time, the Commission shall assess against such employer a civil penalty in the amount of twenty-five dollars ($25.00). The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. INDUSTRIAL COMMISSION -- CIVIL PENALTIES OF $1.00 PER EMPLOYEE, BUT NOT LESS THAN $50.00 NOR MORE THAN $100.00 PER DAY ASSESSED FOR EMPLOYER'S FAILURE TO SECURE THE PAYMENT OF COMPENSATION

Section 115. G.S. 97-94(b) reads as rewritten:

"(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar ($1.00) for each employee, but not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each day of such refusal or neglect, and until the same ceases; and the employer shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law at the election of the injured employee.

The penalty herein provided may be assessed by the Industrial Commission administratively, with the right to a hearing if requested within 30 days after notice of the assessment of the penalty and the right of review and appeal as in other cases. Enforcement of the penalty shall be made by the Office of the Attorney General. The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART IX. DEPARTMENT OF REVENUE

A. CIVIL PENALTY OF $100.00 AND $1,000 FOR DISCIPLINARY EMPLOYMENT ACTION AGAINST DEBTOR WHO HAS MONEY WITHHELD

Section 116. G.S. 105B-4(b) reads as rewritten:

"(b) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any debtor because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil ~~penalty to be paid to the county school fund.~~ penalty. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by a debtor as a result of the violation, and a debtor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART X. SECRETARY OF STATE

A. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 AGAINST FOREIGN CORPORATIONS TRANSACTING BUSINESS WITHOUT AUTHORITY

Section 117. G.S. 55-15-02(d) reads as rewritten:

"(d) A foreign corporation failing to obtain a certificate of authority as required by this Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 AGAINST FOREIGN CORPORATIONS FOR CONDUCTING AFFAIRS WITHOUT AUTHORITY

Section 118. G.S. 55A-15-02(b) reads as rewritten:

"(b) A foreign corporation failing to obtain a certificate of authority as required by this Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof during which it conducted affairs in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the corporation had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it conducts affairs in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

C. CIVIL PENALTY OF $10.00 PER DAY NOT TO EXCEED $1,000 PER YEAR AGAINST FOREIGN LLCS FOR TRANSACTING BUSINESS WITHOUT AUTHORITY

Section 119. G.S. 57C-7-03(b) reads as rewritten:

"(b) A foreign limited liability company failing to obtain a certificate of authority as required by this Chapter shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability company had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability company shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

D. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR SINGLE OR MULTIPLE VIOLATIONS OF SECURITIES ACT

Section 120. G.S. 78A-47(c) reads as rewritten:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five

thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order under this subsection may be entered without prior notice and an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

E. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR WILLFUL VIOLATIONS OF THE INVESTMENT ADVISORS ACT OR RELATED RULES AND ORDERS

Section 121. G.S. 78C-28(c) reads as rewritten:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

The clear proceeds of civil penalties imposed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement imposed under this subsection shall be paid into the General Fund. No order authorized by this subsection may be entered without prior notice of an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

F. SECURITIES DIVISION -- CIVIL PENALTIES UP TO $2,500 OR $25,000 ASSESSED FOR WILLFUL VIOLATING INVESTMENT ADVISORS ACT CONCERNING REGULATION OF ATHLETE AGENT OR RELATED RULES AND ORDERS

Section 122. (a) G.S. 78C-79 is amended by adding a new subsection to read:

"(d) The clear proceeds of civil penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 78C-74 reads as rewritten:

"**§ 78C-74. Disposition of fees.**

~~Fees~~ Except as otherwise provided, fees and other funds received under this Article by the Secretary of State shall be deposited in the State treasury to the credit of the General Fund."

G. SECURITIES DIVISION -- CIVIL PENALTIES NOT TO EXCEED $25,000 OR $50,000 ASSESSED FOR VIOLATION OF THE COMMODITIES ACT

Section 123. G.S. 78D-22(a) reads as rewritten:

"(a) If the Administrator believes, whether or not based upon an investigation conducted under G.S. 78D-21 that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, the Administrator may:

(1) Issue a cease and desist order;

(2) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;

(3) Issue an order requiring reimbursement of the costs of investigation; or

(4) Initiate any of the actions specified in subsection (b) of this section.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any ~~civil penalty or~~ reimbursement of costs imposed by this subsection shall be paid to the General Fund."

H. CIVIL PENALTY IMPOSED AT THE COURT'S DISCRETION NOT TO EXCEED $25,000 OR $500,000 FOR VIOLATING COMMODITIES ACT

Section 124. G.S. 78D-23(a) reads as rewritten:

"(a) (1) Upon a proper showing by the Administrator that a person has violated, or is about to violate, any provision of this Chapter or any rule or order of the Administrator, any court of competent jurisdiction may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of this Chapter or a rule or order of the Administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

a. Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;

b. Disgorgement;

c. Declaratory judgment;

d. Restitution to investors wishing restitution; and

e. Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate this Chapter or a rule or order of the Administrator shall be limited to:

a. A temporary restraining order;

b. A temporary or permanent injunction;

c. A writ of prohibition or mandamus; or

d. An order appointing a receiver or conservator for the defendant or the defendant's assets.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

I. CIVIL PENALTY OF $5,000 OR $25,000 FOR WILLFUL VIOLATION OF PROVISIONS CONCERNING BOXING IN STATE

Section 125. G.S. 143-658(a) reads as rewritten:

"(a) Civil Penalties. -- The Secretary of State may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XI. UTILITIES COMMISSION

A. UNSPECIFIED CIVIL PENALTY FOR VIOLATING SAFETY STANDARDS FOR GAS PIPELINE FACILITIES. MAXIMUM AMOUNT OF PENALTY NOT TO EXCEED THE MAXIMUM AMOUNT IF PENALTY HAD BEEN IMPOSED BY SECRETARY OF U.S. DEPARTMENT OF TRANSPORTATION UNDER 49 U.S.C. APPROXIMATELY § 1679a(a)/ FORFEITURE OF $1,000 BY PUBLIC UTILITIES FOR PROVIDING UNAUTHORIZED SERVICES OR FOR FAILURE TO PROVIDE SERVICES AS AUTHORIZED

Section 126. G.S. 62-302(d) reads as rewritten:

"(d) Use of Proceeds. -- A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public ~~Staff~~ Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from

the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by this Chapter.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XII. ALARM SYSTEM LICENSING BOARD

A. CIVIL PENALTY OF NOT MORE THAN $2,000 FOR VIOLATIONS OF ALARM SYSTEMS LICENSING ACT OR RULES OF ALARM SYSTEMS LICENSING BOARD

Section 127. G.S. 74D-11(d) reads as rewritten:

"(d) In lieu of revocation of suspension of a license or registration under G.S. 74D-10, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who violates any provision of this Chapter, or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. ~~All~~ The clear proceeds of all penalties collected under this section ~~will be deposited in the General Fund.~~ shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XIII. BOARD OF ARCHITECTURE

A. CIVIL PENALTY OF NOT MORE THAN $500.00 PER VIOLATION FOR DISHONEST, INCOMPETENT OR UNPROFESSIONAL CONDUCT BY A REGISTRANT

Section 128. G.S. 83A-15(b) reads as rewritten:

"(b) Actions to recover civil penalties against any registrant may be commenced by the Board pursuant to Chapter 150B of the General Statutes. In determining the amount of any civil penalty, the Board shall consider the degree and extent of harm caused by the violation. ~~Any~~ The clear proceeds of any civil penalty collected hereunder shall be ~~deposited to the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

B. CIVIL PENALTIES NOT TO EXCEED $500.00 PER DAY AUTHORIZED AGAINST NONREGISTERED PERSON OR CORPORATION MISREPRESENTING THEMSELVES AS AN ARCHITECT OR PRACTICING ARCHITECTURE

Section 129. G.S. 83A-16(a) reads as rewritten:

"(a) Any individual or corporation not registered under this Chapter, who shall wrongfully use the title 'Architect' or represent himself or herself to the public as an

architect, or practice architecture as herein defined, or seek to avoid the provisions of this Chapter by the use of any other designation than 'Architect': (i) shall be guilty of a Class 2 misdemeanor; and (ii) be subject to a civil penalty not to exceed five hundred dollars ($500.00) per day of such violation. Each day of such unlawful practice shall constitute a distinct and separate violation. ~~Any~~ The clear proceeds of any civil penalty collected hereunder shall be ~~deposited to the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XIV. BOARD OF CPA EXAMINERS

A. CIVIL PENALTIES NOT TO EXCEED $1,000 FOR VIOLATION OF RULES OF PROFESSIONAL CONDUCT

Section 130. G.S. 93-12(9) reads as rewritten:

"(9) Adoption of Rules of Professional Conduct; Disciplinary Action. -- The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this State. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or to censure the holder of any such certificate or to assess a civil penalty not to exceed one thousand dollars ($1,000) for any one or combination of the following causes:

a. Conviction of a felony under the laws of the United States or of any state of the United States.

b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.

c. Fraud or deceit in obtaining a certificate as a certified public accountant.

d. Dishonesty, fraud or gross negligence in the public practice of accountancy.

e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. ~~Any~~ The clear proceeds of any civil penalty assessed under this section shall be ~~collected by the Board and transferred to the State Treasurer for use in the General Fund.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XV. STATE BOARD OF ELECTIONS

A. $500.00 PENALTY FOR FAILURE OF PRESIDENTIAL ELECTOR TO ATTEND AND VOTE FOR PARTY CANDIDATE

Section 131. G.S. 163-212 reads as rewritten:

"§ 163-212. Penalty for failure of presidential elector to attend and vote.

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided.

The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVI. ELECTRICAL CONTRACTORS

A. CIVIL PENALTIES OF NOT MORE THAN $1,000 IMPOSED FOR VIOLATIONS OF RULES AND REGULATIONS GOVERNING ELECTRICAL CONTRACTORS

Section 132. G.S. 87-47 reads as rewritten:

"§ 87-47. Penalties imposed by Board; enforcement procedures.

(a) Repealed by Session Laws 1989, c. 709, s. 9.

(a1) The following activities are prohibited:

(1) Offering to engage or engaging in electrical contracting without being licensed.

(2) Selling, transferring, or assigning a license, regardless of whether for a fee.

(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting.

(4) Being convicted of a crime involving fraud or moral turpitude.

(5) Engaging in fraud or misrepresentation to obtain a certification, obtain or renew a license, or practice electrical contracting.

(6) Engaging in false or misleading advertising.

(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting.

(a2) The Board may administer one or more of the following penalties if the applicant, licensee, or qualified individual has engaged in any activity prohibited under subsection (a1) of this section:

(1) Reprimand.

(2) Suspension from practice for a period not to exceed 12 months.

(3) Revocation of the right to serve as a listed qualified individual on any license issued by the Board.

(4) Revocation of license.

(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case warrants, and revocation upon failure to comply with the conditions.
(6) Revocation of certification.
(7) Refusal to certify an applicant or a qualified individual.
(8) Refusal to issue a license to an applicant.
(9) Refusal to renew a license.

(a3) In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars ($1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. ~~Civil~~ The clear proceeds of civil penalties collected under this subsection shall be ~~deposited in the General Fund of North Carolina as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

In determining the amount of a civil penalty, the Board shall consider:
(1) The degree and extent of harm to the public safety or to property, or the potential for harm.
(2) The duration and gravity of the violation.
(3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
(5) The violator's prior disciplinary record with the Board.
(6) Whether and the extent to which the violator profited by the violation.

(a4) Any person, including the Board and its staff on their own initiative, may prefer charges pursuant to this section, and such charges must be submitted in writing to the Board. The Board may, without a hearing, dismiss charges as unfounded or trivial. The Board may issue a notice of violation based on the charges, to be served by a member of the Board's staff or in accordance with Rule 4 of the Rules of Civil Procedure, against any person, partnership, firm, or corporation for engaging in an activity prohibited under subsection (a1) of this section or for a violation of the provisions of this Article or any rule adopted by the Board. The person or other entity to whom the notice of violation is issued may request a hearing by notifying the Board in writing within 20 days after being served with the notice of violation. Hearings shall be conducted by the Board or an administrative law judge pursuant to Article 3A of Chapter 150B of the General Statutes. In conducting hearings, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(a5) If the person or other entity does not request a hearing under subsection (a4) of this section, the Board shall enter a final decision and may impose penalties

against the person or other entity. If the person or other entity is not a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section. If the person or other entity is a licensee or a qualified individual, the Board may impose penalties under subsection (a2) of this section, subsection (a3) of this section, or both.

(b) The Board shall adopt and publish rules, in accordance with Chapter 150B of the General Statutes and consistent with the provisions of this Article, governing the matters contained in this section.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding charges and notices of violation pursuant to this section. This record shall include, for each person, partnership, firm, and corporation charged or notified of a violation, the date and nature of each charge or notice of violation, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reinstate a qualified individual's certification and may reinstate a license after having revoked it, provided that one year has elapsed from revocation until reinstatement and that the vote of the Board for reinstatement is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked.

(e) In any case in which the Board is entitled to convene a hearing to consider imposing any penalty provided for in subsection (a2) or (a3) of this section, the Board may accept an offer in compromise of the charge, whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000). ~~Penalties~~ The clear proceeds of penalties collected by the Board under this subsection shall be ~~deposited in the General Fund of North Carolina as nontax revenue.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVII. BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS

A. CIVIL PENALTY NOT TO EXCEED $50.00 PER DAY FOR EMPLOYER ASSISTANCE PROFESSIONAL WHO FAILS TO BE LICENSED AS REQUIRED

Section 133. G.S. 90-506(c) reads as rewritten:

"(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection (a) of this section are final 30 days after the date the assessment is served upon the alleged violation, unless the alleged violator seeks review by the Board within that time.

The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XVIII. STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

A. CIVIL PENALTIES NOT TO EXCEED $2,000 ASSESSED AGAINST PROFESSIONAL ENGINEERS AND LAND SURVEYORS WHO VIOLATE

PROVISIONS OF THE ENGINEERING AND LAND SURVEYING ACT/CIVIL PENALTY ASSESSED AGAINST ENGINEERS AND LAND SURVEYORS WHO COMMIT FRAUD, DECEIT, GROSS NEGLIGENCE, INCOMPETENCE, MISCONDUCT OR VIOLATE THE RULES OF PROFESSIONAL CONDUCT

Section 134. G.S. 89C-21(c) reads as rewritten:

"(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. ~~All~~ The clear proceeds of all civil penalties collected by the Board, including civil penalties collected pursuant to G.S. 89C-22(c), shall be ~~deposited in the General Fund of North Carolina.~~ remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XIX. NORTH CAROLINA BOARD FOR LICENSING OF SOIL SCIENTIST

A. CIVIL PENALTY NOT TO EXCEED $1,000 FOR VIOLATION OF SOIL SCIENTIST LICENSING ACT

Section 135. G.S. 89F-5(c) reads as rewritten:

"(c) The Secretary-Treasurer shall deposit funds received by the ~~Board~~ Board, except for the clear proceeds of civil penalties assessed pursuant to G.S. 89F-20(b), in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in the State. Interest earned on funds may remain in the account and may be expended as authorized by the Board to carry out the provisions of this Chapter. The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter, and all expenses shall be paid upon the warrant of the Secretary-Treasurer. During any fiscal year, expenditures shall not exceed the revenues of the Board.

The clear proceeds of civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XX. VETERINARY MEDICAL BOARD

B. CIVIL PENALTY UP TO $5,000 AGAINST LICENSED VETERINARIES FOR VIOLATING ARTICLE

Section 136. 90-187.8(b) reads as rewritten:

"(b) The Board may impose and collect from a licensee a civil monetary penalty of up to five thousand dollars ($5,000) for each violation of this Article or a rule adopted under this Article. The clear proceeds of these civil penalties shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

The amount of the civil penalty, up to the maximum, shall be determined upon a finding of one or more of the following factors:

(1) The degree and extent of harm to the public health or to the health of the animal under the licensee's care.

(2) The duration and gravity of the violation.

(3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception either to the client or to the Board, or both.
(5) The prior disciplinary record with the Board of the licensee.
(6) Whether and the extent to which the licensee profited by the violation.

PART XXI. CAPE FEAR RIVER AND MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSIONS

A. FINES MAY BE ASSESSED FOR PILOTS WHO VIOLATE RULES OF COMMISSIONS

Section 137. (a) G.S. 76A-5(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

(b) G.S. 76A-35(d) reads as rewritten:

"(d) Fine, License Suspension and Cancellation. -- The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission Chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XXII. REAL ESTATE COMMISSION

A. $500.00 PENALTY FOR EACH VIOLATION OF TIME SHARE DEVELOPER LAWS

Section 138. G.S. 93A-54 is amended by adding a new subsection to read:

"(a1) The clear proceeds of fines collected pursuant to subsection (a) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

PART XXIII. MISCELLANEOUS PROVISIONS

EFFECT OF HEADINGS

Section 139. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

EFFECTIVE DATE

Section 140. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, AND TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any~~

~~portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day

of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and~~

~~costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State. Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that~~

~~such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this

State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the~~

~~collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in

any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except~~

~~that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the

period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. This act becomes effective July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1241-PCS9766-RB

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, AND TO EXTEND THE SUNSET FOR QUALIFIED BUSINESS TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of~~

~~Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy~~

~~upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a

report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment~~

~~of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the

transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to

defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be~~

~~assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be~~

~~passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the

Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an

assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a

redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 25. Sections 1 through 22 of this act become effective September 1, 1998. The remainder of this act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

S1241-ALC-7/15

Date July 21, 1998

Comm. Sub. [YES]
Amends Title [YES]
PCS9766 Edition

Sen. Blust

moves to amend the bill on page 1, line 3,
by adding the following after the phrase "PENALTIES,": "TO PROVIDE FOR REIMBURSEMENT OF EXPENSES TO A PREVAILING TAXPAYER IN AN ADMINISTRATIVE APPEAL OR A LAWSUIT IF THE STATE WAS NOT SUBSTANTIALLY JUSTIFIED IN MAINTAINING ITS POSITION AGAINST THE TAXPAYER,"; and

and on page 11, lines 38 - 39,
by adding the following section between the lines and renumbering the remaining sections accordingly:

"Section 17. G.S. 105-241.2 is amended by adding a new subsection to read:

'(b3) Payment of Taxpayer's Costs. -- The Tax Review Board shall award costs, including reasonable attorneys fees, to a taxpayer if the Board finds that the taxpayer is the prevailing party and that the Secretary was not substantially justified in the position asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the taxpayer substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues presented.'";

and on page 13, lines 7 - 8,
by adding the following section between the lines and renumbering the remaining sections accordingly:

"Section 21. G.S. 105-267 reads as rewritten:

'**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

S1241-ALC-7/15 Page 2 of __

protest period for a tax levied in Article 2A, 2B, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The court shall award costs, including reasonable attorneys fees, to a taxpayer if the court finds that the taxpayer is the prevailing party and that the Secretary was not substantially justified in the position asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the taxpayer substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section.'";

and on page 14, line 9, by deleting "22" and substituting "24".

SIGNED John Blust
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

S1241-ALC-7/17 Page 1 of __

Date_____, 199

Comm. Sub. [YES]
Amends Title [YES]
PCS9766 Edition

Sen. Ballenger

moves to amend the bill on page 1, lines 5 - 6, POSTPONE by rewriting the lines to read:
"TAXES PAID, TO ~~REMOVE THE SUNSET FROM THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT, AND TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL NORTH CAROLINA~~ FILM PRODUCTION BUSINESSES.";

and on page ~~13~~ 14, line ~~10~~ 5 BY 9-10 ~~through page 14, line 10,~~ by rewriting the lines to read:
"Section 23. Section 7 of Chapter 443 of the 1993 Session Laws is repealed.
Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:
'Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 1999.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.
A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.
Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.
Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of

the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes.'

Section 25. G.S. 105-163.014 is amended by adding a new subsection to read:

'(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture.'

Section 26. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

Section 27. G.S. 105-163.010 is amended by adding a new subdivision to read:

'(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code.'

Section 28. G.S. 105-163.010(14) reads as rewritten:

'(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt.'

Section 29. G.S. 105-163.013(b) reads as rewritten:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

'(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:

a. Providing a professional service as defined in Chapter 55B of the General Statutes.

b. Construction or contracting.

c. Selling or leasing at retail.

d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.

e. Providing personal grooming or cosmetics services.

f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Division for an investment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

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

S1241-ALC-7/17 Page 4 of __

made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.'

Section 30. Sections 1 - 22 of this act become effective September 1, 1998. Sections 23 and 24 of this act are effective when this act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1998. "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1241-PCS2903-RB

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, AND TO EXTEND THE SUNSET FOR QUALIFIED BUSINESS TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of~~

~~Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy~~

~~upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State. Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a

report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment~~

~~of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the

transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to

defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be~~

~~assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be~~

~~passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the

Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an

assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a

redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 25. G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

Section 26. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

Section 27. G.S. 105-163.010 is amended by adding a new subdivision to read:

"(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

Section 28. G.S. 105-163.010(14) reads as rewritten:

"(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

Section 29. G.S. 105-163.013(b) reads as rewritten:

"(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the

requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:

a. Providing a professional service as defined in Chapter 55B of the General Statutes.

b. Construction or contracting.

c. Selling or leasing at retail.

d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.

e. Providing personal grooming or cosmetics services.

f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a

consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year."

Section 30. Sections 1 - 22 of this act become effective September 1, 1998. Sections 23 and 24 of this act are effective when this act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 1241:
Proposed Committee Substitute
Amendments to the Revenue Laws

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 15, 1998
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1241 incorporates two bills that the committee has previously discussed:

- Senate Bill 1241, which amends several provisions in the penalty sections of the revenue laws at the request of the Department of Revenue. These changes are contained in sections 1 through 22 of the bill. They become effective September 1, 1998.
- Senate Bill 1239, which extends the sunset for the qualified business tax credit an additional four years, until the year 2003. It retains the current $6 million cap on the credit. This change is contained in sections 23 and 24 of the bill. It becomes effective when the act becomes law.

Senate Bill 1241:

G.S. 105-237 gives the Secretary the authority to waive or reduce all penalties imposed under the tax laws, except the penalty for bad checks. In practice, the authority to waive or reduce penalties is delegated to approximately 55 individuals who are in the collection field offices and the audit department located in Raleigh. The Department of Revenue has a penalty policy that these employees must follow to ensure consistent treatment among taxpayers. The Department of Revenue is currently revising its penalty guidelines. As part of the review process, the Department looked at all of the penalty provisions in Chapter 105. Based upon its review of the penalty provisions, the Department of Revenue requested the Revenue Laws Study Committee to recommend the following changes contained in sections 1 - 22 of this bill:

- It conforms the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
- It repeals several penalties that are obsolete or ineffective.
- It provides that a refund of sales taxes, motor fuel taxes, and excise taxes on sacramental wine are barred if filed more than 3 years after their due date. The current law provides a reduction of the amount refunded for late applications.

- It clarifies that additional taxes are assessable as penalties so that it is clear the taxes may be waived by the Secretary. It also clarifies that penalties are assessable as additional taxes to ensure the taxpayer receives the full administrative and judicial remedies applicable to tax assessments. This clarification conforms with the statutory definition of "tax" in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount."
- It provides a uniform penalty for all tax deficiencies that exceed 25% of the tax liability.
- It expands the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC.

Senate Bill 1239:

The qualified business tax credit was enacted in August 1987 to promote economic development for North Carolina business developments. The initial credits applied to both corporations and individual taxpayers and there was a cap on the total amount of all tax credits of $12 million. In response to a United States Supreme Court decision in Fulton Corp. v. Faulkner in 1996, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit will expire for investments made on or after January 1, 1999. The PCS extends the credit for four additional years - until January 1, 2003.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim his allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next 5 years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of

$6 million in tax credits in proportion to the size of the credit claimed by each taxpayer.

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because it reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in a business whose purpose is to invest in businesses with headquarters and operations in North Carolina while no tax reduction is allowed for purchasing similar stock in corporations whose purpose is to invest in businesses with headquarters and operations outside of North Carolina. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit, along with several others, at great length. The original proposal of the Committee was to repeal ALL qualified business investment credits, effective 1-1-97. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include all investments wherever located but was limited to individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50 mile radius of their home.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1241 (Senate Finance Committee Substitute)

SHORT TITLE: Amendments to the Revenue Laws

SPONSOR(S): Senator Hoyle, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Penalties		No estimate available			
Qualified Business Tax Credit			**($6 mil.)**	**($6 mil.)**	**($6 mil.)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Department of the Secretary of State

EFFECTIVE DATE: Sections 1 through 22 (penalties) become effective September 1, 1998. The remainder of the act (qualified business tax credit) is effective when it becomes law.

BILL SUMMARY: The bill gives uniformity and simplicity to a number of penalties imposed by the Department of Revenue. The bill also extends the sunset on the qualified business tax credit from January 1, 1999 to January 1, 2003.

ASSUMPTIONS AND METHODOLOGY:

PENALTIES

This bill uses GS 105 - 236 as the standard for penalties charged by the Department of Revenue. A number of technical or clarifying changes are made in the bill to bring uniformity to a list of penalties imposed by the Department. Some penalties are deleted because they are not used by the Department of Revenue, such as the penalty on the clerks of Superior Court in Section 2 and the penalty for frivolous petitions in section 17. However, in the attempt for uniformity, some sections of the bill may create a small revenue impact (less than $100,000). Section 7 lowers the penalty on the tobacco products tax and thus should produce a decrease in revenue. Sections 4 and 9 have higher penalties than the previous statute and may create a revenue gain. **Unfortunately, no estimate can be made because the Department does not collect data on these penalties.**

QUALIFIED BUSINESS TAX CREDIT

The current tax credit for qualified business ventures expires for investments made on or after January 1, 1999. Investments made in 1998, the last year of the credit, will be taken in tax year 1999. The last General Fund impact for this credit will be in FY 99-00 when individual income tax returns are filed in the spring of 2000. (carry forwards will extend some of the credits into future years). Budget availability estimates for future years assume the credit will sunset in 1999. **Extension of the sunset in 1999, effective for tax year 2000, will produce an annual General Fund revenue loss of $6 million for fiscal years 2000-01 through FY 2003-04.**

The qualified business tax credits given since 1993 are as follows:

1993	$4,711,913
1994	$6,011,513
1995	$3,523,894
1996	$4,677,221
1997	$6,000,000 *
1998	$5,082,000 **

* The Department of Revenue received requests for $9,264,679 in credits, but the General Assembly limited the credit amount to $6 million in 1997.

** This amount represents the applications processed as of July 7, 1998. (approximately $200,000 more in credits pending)

FISCAL RESEARCH DIVISION
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1241-PCS2904-RB

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, TO EXTEND THE SUNSET ON THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT, AND TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL FILM PRODUCTION BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum~~

~~(10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent~~

~~lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"§ 105-113.87. Refund for excise tax paid on sacramental wine.

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"§ 105-130.6. Subsidiary and affiliated corporations.

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions

of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment~~

~~of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the

transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to

defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be~~

~~assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be~~

~~passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the

Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

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

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an

assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a

redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 25. G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

Section 26. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

Section 27. G.S. 105-163.010 is amended by adding a new subdivision to read:

"(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

Section 28. G.S. 105-163.010(14) reads as rewritten:

"(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

Section 29. G.S. 105-163.013(b) reads as rewritten:

"(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the

requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:

a. Providing a professional service as defined in Chapter 55B of the General Statutes.

b. Construction or contracting.

c. Selling or leasing at retail.

d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.

e. Providing personal grooming or cosmetics services.

f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a

consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year."

Section 30. Sections 1 - 22 of this act become effective September 1, 1998. Sections 23 and 24 of this act are effective when this act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 1291*
Transportation Committee Substitute Adopted 6/11/98
Transportation Committee Substitute #2 Adopted 7/15/98
Transportation Committee Substitute #3 Adopted 7/16/98

Short Title: Transportation Corridors. (Public)

Sponsors:

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

The General Assembly of North Carolina enacts:

Section 1. Article 2E of Chapter 136 reads as rewritten:

"ARTICLE 2E.

"~~Roadway~~ Transportation Corridor Official Map Act.

"§ 136-44.50. ~~Roadway~~ Transportation corridor official map act.

(a) A ~~roadway~~ transportation corridor official map may be adopted or ~~amended~~ amended by any of the following:

(1) ~~by the~~ The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to ~~G.S. 136-66.2 or~~ G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

(2) ~~by the~~ The Board of Transportation for any portion of the existing or proposed State highway ~~system.~~ system or for any public

transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor included in the adopted long-range transportation plan.

Before a city adopts a ~~roadway~~ transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a ~~roadway~~ transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city ~~must~~ shall obtain approval from the Board of County Commissioners.

No ~~roadway~~ transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the ~~city~~ city, the regional transportation authority, or the Department of Transportation ~~in each county affected by the map,~~ has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the ~~roadway~~ transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the ~~roadway~~ transportation corridor passes.

c. By posting copies of the proposed ~~roadway~~ transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the ~~roadway~~ transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) ~~Roadway~~ Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a ~~roadway~~ transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the 'grantor' index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within ~~one year~~ two years following the establishment of a ~~roadway~~ transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the ~~one-year~~ two-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the ~~roadway~~ transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a ~~roadway~~ transportation corridor official map or amendments to a ~~roadway~~ transportation corridor official map. When a city prepares a ~~roadway~~ transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term 'amendment' for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, or deletion of the

corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

"§ 136-44.51. Effect of ~~roadway~~ transportation corridor official map.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the ~~roadway~~ transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the ~~roadway~~ transportation corridor. The ~~district engineer of the Highway District in which the roadway corridor is located~~ Secretary of Transportation or his designee shall be notified within 10 days of all requests for building permits or subdivision approval within the ~~roadway~~ transportation corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the ~~roadway~~ transportation corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) ~~No~~ In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"§ 136-44.52. Variance from ~~roadway~~ transportation corridor official map.

(a) The Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"§ 136-44.53. Advance acquisition of right-of-way within the ~~roadway~~ transportation corridor.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, the Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or then it becomes law

a city which initiated the ~~roadway~~ transportation corridor official map ~~is authorized to~~ may make advanced acquisition of specific parcels of property when ~~such~~ that acquisition is determined by the respective governing board to be in the best public interest to protect the ~~roadway~~ transportation corridor from development or when the ~~roadway~~ transportation corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any ~~such~~ advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective ~~municipal~~ governing board which initiated the ~~roadway~~ transportation corridor official map shall develop and adopt appropriate policies and procedures to govern ~~such~~ the advanced acquisition of right-of-way and to assure ~~such~~ that the advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a ~~roadway~~ transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of ~~such~~ any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted ~~roadway~~ transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits."

"**§ 136-44.54. Standard for appraisal of right-of-way within corridor.**

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article."

Section 2. G.S. 105-277.9 reads as rewritten:

"**§ 105-277.9. Taxation of property inside certain roadway corridors.**

Real property that lies within a ~~roadway~~ transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

(1) As of January 1, no building or other structure is located on the property; and

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Section 3. G.S. 136-102.6(j) reads as rewritten:

"(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a ~~roadway~~ transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article."

Section 4. G.S. 160A-458.4 reads as rewritten:

"**§ 160A-458.4. Designation of ~~roadway~~ transportation corridor official maps.**

Any city may establish ~~roadway~~ transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Section 5. This act becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1291

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

S1291-ARW-001

Page 1 of __

Date_____,1998

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

Senator _____

moves to amend the bill on page 4, line 11, by rewriting that line to read:

"Transportation or his designee, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all requests for"

further amend the bill on page 2, line 7 by rewriting that line to read:
"transportation corridor, or adjacent station or parking lot, included in the adopted long-range".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1291*
Transportation Committee Substitute Adopted 6/11/98
Transportation Committee Substitute #2 Adopted 7/15/98
Transportation Committee Substitute #3 Adopted 7/16/98
Proposed Committee Substitute S1291-PCS8848-RW001

Short Title: Transportation Corridors. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

The General Assembly of North Carolina enacts:

Section 1. Article 2E of Chapter 136 reads as rewritten:

"ARTICLE 2E.

"~~Roadway~~ Transportation Corridor Official Map Act.

"**§ 136-44.50. ~~Roadway~~ Transportation corridor official map act.**

(a) A ~~roadway~~ transportation corridor official map may be adopted or ~~amended~~ amended by any of the following:

(1) ~~by the~~ The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to ~~G.S. 136-66.2 or~~ G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

(2) ~~by the~~ The Board of Transportation for any portion of the existing or proposed State highway ~~system.~~ system or for any public

transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

Before a city adopts a ~~roadway~~ transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a ~~roadway~~ transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city ~~must~~ shall obtain approval from the Board of County Commissioners.

No ~~roadway~~ transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the ~~city~~ city, the regional transportation authority, or the Department of Transportation ~~in each county affected by the map,~~ has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the ~~roadway~~ transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the ~~roadway~~ transportation corridor passes.

c. By posting copies of the proposed ~~roadway~~ transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the ~~roadway~~ transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) ~~Roadway~~ Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a ~~roadway~~ transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the 'grantor' index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within ~~one year~~ two years following the establishment of a ~~roadway~~ transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the ~~one-year~~ two-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the ~~roadway~~ transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a ~~roadway~~ transportation corridor official map or amendments to a ~~roadway~~ transportation corridor official map. When a city prepares a ~~roadway~~ transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term 'amendment' for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, or deletion of the

corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

"§ 136-44.51. Effect of ~~roadway~~ transportation corridor official map.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the ~~roadway~~ transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the ~~roadway~~ transportation corridor. The ~~district engineer of the Highway District in which the roadway corridor is located~~ Secretary of Transportation or his designee, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all requests for building permits or subdivision approval within the ~~roadway~~ transportation corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the ~~roadway~~ transportation corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) ~~No~~ In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"§ 136-44.52. Variance from ~~roadway~~ transportation corridor official map.

(a) The Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"§ 136-44.53. Advance acquisition of right-of-way within the ~~roadway~~ transportation corridor.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, the Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or then it becomes law a city which initiated the ~~roadway~~ transportation corridor official map ~~is authorized to~~ may make advanced acquisition of specific parcels of property when ~~such~~ that acquisition is determined by the respective governing board to be in the best public interest to protect the ~~roadway~~ transportation corridor from development or when the ~~roadway~~ transportation corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any ~~such~~ advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective ~~municipal~~ governing board which initiated the ~~roadway~~ transportation corridor official map shall develop and adopt appropriate policies and procedures to govern ~~such~~ the advanced acquisition of right-of-way and to assure ~~such~~ that the advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a ~~roadway~~ transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of ~~such~~ any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted ~~roadway~~ transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits."

"**§ 136-44.54. Standard for appraisal of right-of-way within corridor.**

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article."

Section 2. G.S. 105-277.9 reads as rewritten:

"**§ 105-277.9. Taxation of property inside certain roadway corridors.**

Real property that lies within a ~~roadway~~ transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

(1) As of January 1, no building or other structure is located on the property; and

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Section 3. G.S. 136-102.6(j) reads as rewritten:

"(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a ~~roadway~~ transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article."

Section 4. G.S. 160A-458.4 reads as rewritten:

"**§ 160A-458.4. Designation of ~~roadway~~ transportation corridor official maps.**

Any city may establish ~~roadway~~ transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Section 5. This act becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective date of this act.

EXPLANATION OF SENATE BILL 1291:
Transportation Corridors (4th Edition)

TO: Senate Finance Committee
FROM: Giles Perry, Staff Attorney
DATE: July 21, 1998
SPONSOR: Senator Gulley

The concept behind Senate Bill 1291 was recommended by the LRC Public Transit study committee. The Proposed Committee Substitute is intended to accommodate the concerns expressed by some members of the Senate.

Under current law, the Department of Transportation and cities are authorized to preserve highway corridors by designating them on official roadway corridor maps. DOT must begin work on a preliminary engineering or an environmental impact statement (EIS) for the project proposed for the corridor within one year from the date the map is filed. Once the maps are properly adopted and filed at the register of deeds, issuance of a building permit for a project on land subject to a corridor map can be delayed for three years from the date of submittal.

Senate Bill 1291 expands existing law concerning Roadway Corridor Official maps by:

1. Authorizing DOT and cities to preserve transit corridors, in addition to road corridors.
2. Authorizing Public Transit Authorities created under Article 26 and 27 of Chapter 160A to preserve transit corridors.

In addition, Senate Bill 1291 changes the procedures concerning adoption and effect of the transportation corridors official maps, as follows:

1. Allows the reserving entity up to *two* years to begin preliminary engineering or EIS work on the project in the corridor.
2. Requires indexing of the corridor in the grantor files at the register of deeds, to insure notice to affected property owners and subsequent purchasers.
3. Clarifies that all notice and indexing procedures in the statue apply to amendments as well as the original filing of the corridor.
4. Clarifies that appraisals of land subject to the corridor official maps shall not be affected by the fact that it is in a corridor.

Senate Bill 1291 also makes several conforming changes, including extending the favorable property tax treatment for land subject to *highway* corridor official maps to land subject to all of the newly redesignated *transportation* corridor official maps. Such land is taxable at 20% of the general tax rate levied on real property.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1291 (Third Edition of the Bill)

SHORT TITLE: Transportation Corridors

SPONSOR(S): Senator Gulley

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Local Property Taxes					
Phase I	0	0	($16,968)	($16,968)	($16,968)
Phase II	0	0	0	0	($467,048)
TOTAL LOCAL	**0**	**0**	**($16,968)**	**($16,968)**	**($484,016)**

EXPENDITURES

No cost impact expected on the Highway Fund or local funds.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Local Governments involved in a rapid transit project.

EFFECTIVE DATE: The bill becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective data.

BILL SUMMARY: Under current law the Department of Transportation, as well as cities, can preserve highway corridors by designating them on official roadway corridor maps. By designating the corridors on an official corridor map, the Department and cities effectively stop development on the property. The Department and the cities can delay any development on the corridor for three years, in anticipation of a future road project. The bill extends the law to transit corridors (light rail corridors) by using the term "transportation" corridors instead of "highway corridors". The bill also changes the procedures for adoption and the impact of corridor maps. The bill extends the favorable tax treatment for land subject to the highway corridor regulations to all transit corridor land. The bill also authorizes Public Transit

Authorities to preserve transit corridors. Under current law only the Department of Transportation and cities can preserve a corridor. The bill makes other conforming changes to the existing highway corridor map system.

ASSUMPTIONS AND METHODOLOGY: Two items in the bill have a potential fiscal impact. First, the bill requires that the Register of Deeds make notations on the property records for each parcel of property affected by transportation corridors. Based on information provided by the Department of Transportation and the North Carolina Register of Deeds Association, Fiscal Research believes the impact of this requirement on counties would be insignificant.

The bill also extends the "favorable tax treatment" received by owners of highway corridor land to owners of transit authority land. Under current law, property included in a highway corridor map is taxable at only 20% of the general property tax rate for the period the land is on a highway corridor map. As such, the property owner gets a significant local property tax reduction on that particular piece of property. (The tax reduction is a form of consideration for limiting development on the site.) The provision only applies if the property is undeveloped (there are no buildings on the property) and not subdivided.

At present, only the Triangle area is in the process of developing a public transit system, although the Triad area may consider such a development in future years. Because the Triangle is the only area likely to map a transit corridor before the end of FY 2002-3 it is the only area considered in the analysis. According to the Triangle Transit Authority, the bill has a potential fiscal impact on Wake County, Durham County, and Orange County, as well as the municipalities of Raleigh, Mooresville, Durham, and the Research Triangle Park. The fiscal impact will be the loss of 80% of the property tax revenue associated with undeveloped tracts of land on the corridor map. The chart below outlines the local government losses.

	Property Value	**Purpose**	**County Loss**	**Municipal Loss**
Phase I:				
Wake County	$1,000,000	Stations in Raleigh	$ 5,000	$ 4,150
	$200,000	Stations in Mooresville	$ 1,000	$ 960
Durham County	$400,000	Stations in RTP	$ 2,999	$ 280
	$200,000	Stations in the City of Durham	$ 1,499	$ 1,080
TOTAL PHASE I	$1,800,000		$ 10,498	$ 6,470
Phase II:	Property Value	Purpose	County Revenue Loss	Municipal Loss
Durham County	$44,000,000	Rail and Stations	$ 329,868	unknown
Orange County	$19,000,000	Rail and Stations	$ 137,180	unknown
TOTAL PHASE II	$63,000,000		$467,048	unknown

The Triangle Transit Authority expects to map Phase I in FY 2000-1. They also expect to map portions of Phase II in FY 2002-3. The revenue loss begins in the fiscal year the property is

mapped, and continues for three years. After three years the property is removed from the map, or is purchased by a city or the Department of Transportation for development of the rail line. As such, triangle local governments will lose $16,968 in property tax revenue in fiscal years 2000-1, 2001-2, and 2002-3. This is the loss associated with Phase I development. Durham and Orange counties will lose an additional $467,048 in fiscal years 2002-3, 2003-4, and 2004-5. These are the costs associated with Phase II development. Municipal losses associated with Phase II can not be calculated because the exact location of the lines and stations has not been determined.

Note: This fiscal analysis only addresses the fiscal impact of changes in the map act. It does not address the fiscal impact of potential land purchases for mass transit.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps and Evan Rodewald
APPROVED BY:
DATE: July 20, 1998

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 21, 1998**

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wood	NC Farm Bureau Federation
Alice Garland	Electricities
Estherine Davis	Electricities
Amy Jo Baur	Smith Anderson
Nancy Bradley	NCCBI
Ann Case	NCRMA
BILL SCOGGIN	NCBA
HUGH TILSON	NCHA
Jan Crotts	NCASA
Susan Harrison	WCPSS
Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 21, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Crowell	Atty, Raleigh
Roger Nietsch	SBE
Ann Belcher	SBE
Tom Mills	Brady P Dixon LLP
Eric Rudolph	Andrews Chamber of commerce
Susan Markham	Eggers
	NC Bankers Assn
Chris Valauri	NC Bankers
	WCSR
	WCSR
	NC HBA

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 21, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Taylor	Womble Carlyle
Linda W. Dees	DOR
Amanda Dees	
Bill Dail	DOR
Debbie Swicegood	DOR
Amy Royal	NCDOT
Angela A Hice	NCDOR
Donna Alderman	NCDOR
Greg Radford	NC DOR
Dale Talbert	Atty Gen Office
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Tuesday, July 21, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Cozort	Parker Poe Adams & Bernstein
Jim Ritchy	TTA
Mike Carpenter	NCHSA
John Barlow	DOR
Mark Moore	Moore & VanAllen
Tom Reeve	NCSR
V. W. McBride	NCTA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, July 22, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

S.B. **882** Civil Penalties Fund Established.

Draft Number:	PCS7887
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 4

S.B.(CS #3)**1291** Transportation Corridors.

Draft Number:	PCS8848
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: **CORRECTED REPORT** July 21 SB 882 1291

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, July 23, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1241** Amendments to the Revenue Laws.

Draft Number:	PCS2904
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: July 21 SB 1241

AGENDA

SENATOR FINANCE COMMITTEE MEETING

JULY 22, 1998

ROOM 544 LOB - 12:00 NOON

Meeting Called to Order - Senator David W. Hoyle, Presiding

Introduction of Pages

BILLS TO BE CONSIDERED:

HB 1352 - Repeal Cabarrus Initiative Law - Rep. Capps
HB 1549 - Currituck/Beach Driving Penalty - Rep. Owens
SB 396 - Downtown Development Zone - Sen. Larry Shaw
SB 1408 - Tax Return Donation for Habitat - Sen. Wellons

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 22, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, July 222, 1998 at 12:00 Noon in Room 544 LOB. There were 25 members of the committee present. Senator David Hoyle, Co-chairman, called the meeting to order and introduced the Pages, they are: James Autry from Cumberland County, sponsored by Senator Tony Rand and Blair Sweeney from Caldwell County, sponsored by Senator Moore.

H. B. 1352 - Repeal Cabarrus Initiative Law

Senator John Kerr explained the bill for Representative Capps. Senator Hartsell moved for a "favorable" report, motion passed. (Copy of Bill and Explanation are included in Minutes).

H. B. 1549 - Currituck/Beach Driving Penalty

Senator Hoyle explained the bill for Representative Owens. Senator Lee moved for a "favorable" report, motion passed. (Copy of Bill and Fiscal Note are included in Minutes).

S. B. 396 - Downtown Development Zone

Senator Larry Shaw came again to explain the bill (Bill originally heard at July 15, 1998 Meeting). Senator Lee moved for a "favorable" report and bill be rolled into a new committee substitute, motion passed. (Copy of Bill, Explanation, Fiscal Note and New Committee Substitute Bill are included in Minutes).

S. B. 1408 - Tax Return Donation for Habitat

Senator Wellons came to explain the bill. Senator Dannelly moved for adoption of a proposed committee substitute for the purpose of discussing, motion passed. After numerous comments and questions on the bill, Senator Dannelly moved to give the committee substitute bill a "favorable" report. Senator Soles made a substitute motion to send the bill to the Revenue Laws Study Committee for review, motion passed. (Copy of Bill, Proposed Committee Substitute Bill, Explanation and Fiscal Note on PCS are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #1
Committee Report dated July 22, 1998 is Attachment #2
Committee Report dated July 23, 1998 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1352

Short Title: Repeal Cabarrus Initiative Law. (Local)

Sponsors: Representatives Capps, Brawley, Cansler, Gray, Hill, Neely, Ramsey, C. Wilson; Arnold, Davis, Eddins, Hall, Reynolds, Starnes, and G. Wilson.

Referred to: Rules, Calendar and Operations of the House.

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE INITIATIVE AND REFERENDUM AUTHORITY OF CABARRUS COUNTY AND THE CITY OF CONCORD.

The General Assembly of North Carolina enacts:

Section 1. Sections 3 and 4 of S.L. 1997-452 are repealed.

Section 2. This act is effective on and after March 1, 1998.

EXPLANATION OF HOUSE BILL 1352:
Repeal Cabarrus Initiative Law

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 21, 1998
SPONSOR: Representative Capps

House Bill 1352 would repeal S.L. 1997-452 (House Bill 786), effective March 1, 1998. S.L. 1997-452 is a local act authorizing Cabarrus County and the City of Concord to hold binding public referenda on "any question of public interest." Based on this local act, Cabarrus County held a referendum February 24, 1998, to approve levying an additional local sales tax and land transfer tax. The voters turned down the sales tax 63% to 37% and the land transfer tax 65% to 35%.

The Revenue Laws Study Committee found that the act raised a number of legal questions and policy questions that would likely result in litigation if the voters approved a tax increase. Other counties had expressed interest in having similar legislation enacted on their behalf in order to raise taxes. For this reason, the Committee determined that the act had statewide consequences. Because of the potential problems with this type of initiative and referendum law, which applies to any issue, can be initiated by the local government as well as by citizens, and is binding, the Committee recommended that it be repealed.

Several issues arose regarding the constitutionality of the county's effort to raise taxes. The Attorney General had issued an opinion that the county could not levy or increase taxes under the act because the act was not passed by rollcall vote on three separate days in each house, as required by Section 23 of Article II of the North Carolina Constitution.[1] The county argued that its authority to raise taxes came not from the act but from Section 8 of Article I of the North Carolina Constitution, which protects citizens from taxation without representation.[2] Before the voters defeated the proposed taxes in Cabarrus County, a lawsuit had been filed challenging their legality.

---

[1] Section 23 provides in pertinent part: "No laws shall be enacted to...impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days...."

[2] Article I, Section 8 reads: "Representation and taxation. The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given."

The local act also left some policy questions unanswered. The act states that any question of public interest approved by the voters becomes law. This language is extremely broad and, if interpreted literally, would appear to authorize any measure whatsoever, even measures that existing Statewide law prohibits the city or county from acting on. The only measures that could not become effective under the language of the act would be those that violate the State or federal constitution. The rules of statutory construction state that in interpreting the laws, the judicial branch is required to follow the language of the statute. A court has no power or right to strike out clear and unambiguous words or construe them away. If the law were interpreted literally, the local governments could act on issues such as the following, about which general law otherwise restricts local governments' legislative authority: environmental regulation, welfare, public schools, gun control, smoking restrictions, budgets and fiscal control, criminal laws, hunting and fishing, gambling, and alcoholic beverages.

On the other hand, scholars at the Institute of Government of the University of North Carolina at Chapel Hill raised the argument that the act may in fact grant only the authority to hold referenda and no other authority beyond that already provided in current law. This argument is based on the fact that North Carolina is not a home rule state and, because the act represents a dramatic departure from the traditional relationship between the State and its local governments, a court might well hold that it does not grant any authority beyond what is already specifically provided by law. These competing interpretations of the law can be resolved only by the judicial branch.

S.L. 1997-452 is unique. Under current law, the Town of Spindale[3] is the only local government that has a broad referendum procedure, but it can be initiated only by a petition of the voters and the referenda are referenda are nonbinding. Ten other municipalities[4] have a binding initiative procedure, but the procedure is limited to ordinances. The procedure can be initiated only by petition of the voters, not by the governing body of the town. There are no counties that have either of these two types of initiative procedures.

---

[3] Chapter 378 of the 1975 Session Laws.

[4] City of Asheville, Chapter 121 of the 1931 Session Laws and Chapter 30 of the 1935 Session Laws; City of Greensboro, Chapter 1137 of the 1959 Session Laws and Chapter 4 of the 1991 Session Laws; Town of Lewisville, Chapter 116 of the 1991 Session Laws; City of Lumberton, Chapter 115 of the 1963 Session Laws; City of Morganton, Chapter 180 of the 1975 Session Laws; City of Raleigh, Chapter 1184 of the 1949 Session Laws and Chapter 970 of the 1957 Session Laws; Town of River Bend, Chapter 636 of the 1995 Session Laws; City of Wilmington, Chapter 495 of the 1977 Session Laws and Chapter 367 of the 1983 Session Laws; City of Winston-Salem, Chapter 13 of the 1965 Session Laws and G.S. 160-334 (repealed): Town of Wrightsville Beach, Chapter 611 of the 1989 Session Laws.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1549

Short Title: Currituck/Beach Driving Penalty. (Local)

Sponsors: Representative Owens.

Referred to: Local & Regional Government I, if favorable, Judiciary I.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FINE FOR DRIVING A VEHICLE ON THE BEACH IN CURRITUCK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-139.1(a), as enacted by Chapter 875 of the 1985 Session Laws, reads as rewritten:

"**§ 153A-139.1. Regulation of motor vehicles at beaches.**

(a) A county may by ordinance regulate, restrict, and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the county on the foreshore, beach strand, and the barrier dune system. Violation of any ordinance adopted by the governing body pursuant to this section is a misdemeanor, punishable by a fine of not more than ~~fifty dollars ($50.00),~~ five hundred dollars ($500.00), or by imprisonment for not more than 30 days, or both in the discretion of the court."

Section 2. This act becomes effective December 1, 1998, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1549
SHORT TITLE: Currituck/Beach Driving Penalty
SPONSOR(S): Representative Owens

FISCAL IMPACT

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

FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03

REVENUES

May increase Currituck County revenue, but unable to estimate reliably.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Currituck County.
EFFECTIVE DATE: December 1, 1998.

BILL SUMMARY: The bill increases the maximum fine to $500.00 for driving a motor vehicle on the foreshore, beach strand, or barrier dune system in Currituck County. The current maximum fine is $50.00.

ASSUMPTIONS AND METHODOLOGY: Currituck County has an extensive policy on driving on the beach. Some vehicles, such as three wheel buggies, can receive permits to drive on the beach. Most vehicles can not. There are also restrictions on what time of year individuals can drive on the beach. Under these ordinances, Currituck County issues approximately 50 - 60 tickets, on average, for driving illegally on the beach each season. While the fine actually paid varies, the average fine is near the maximum of $50.00. (The fines vary because of magistrate discretion upon petition). As such, the annual income the county receives from these fees is $2,500 to $3,000 (50 tickets times $50.00 each, and 60 tickets times $50.00 each). If the number of violators remains the same, and the county continues to impose the maximum fine, the county will receive $25,000 to $30,000 in fines (50 tickets times $500.00 each, and 60 tickets times $500.00 each). It is unlikely the number of violators would remain the same with the increased penalties. However, no comparison data is available from other beach front counties. (Because the Park Service and local municipalities control most of their beach front property, very few if any of the beach counties have similar ordinances.). As such, no reliable fiscal estimate is possible.

FISCAL RESEARCH DIVISION 733-4910 **DATE:** July 20, 1998
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 396
Rules and Operations of the Senate Committee Substitute Adopted 6/29/98

Short Title: Downtown Development Zone Improvement. (Public)

Sponsors:

Referred to: Appropriations.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DOWNTOWN REVITALIZATION BY ALLOWING A CREDIT FOR CONTRIBUTIONS FOR DEVELOPMENT ZONE PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that downtowns are central to the creation of small, locally owned businesses and that vital downtowns also play a role in the recruitment of larger businesses. Strong downtowns reduce urban sprawl and the costs and quality of life problems associated with urban sprawl. For these reasons, the General Assembly finds that revitalizing declining urban areas is crucial to the well-being of the State as a whole.

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.13. Credit for contribution for development zone project.**

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project. The credit may not be taken for the year in which the contribution is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (d) of this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:
a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.
b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.
c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.
d. Its primary function is to act as deal-maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:
a. A community development corporation.
b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701, et seq.).
c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone.

(c) Limitations. -- A taxpayer who claims a credit under this section shall identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is

allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(d) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer shall include with the application a certified appraisal of the value of the property contributed.

(e) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d) of this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of five million dollars ($5,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the contribution was made. The Secretary's allocations based on applications filed pursuant to subsection (d) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(f) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce shall file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department shall notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

Section 3. G.S. 105-129.4(a) reads as rewritten:

"(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the credit allowed by G.S. 105-129.13 without regard to the taxpayer's type of business. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer

engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing or processing.
(5) Warehousing or distribution.

A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, the taxpayer hires at least 40 additional full-time employees to fill new positions at the office. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection."

Section 4. G.S. 105-129.6(a) reads as rewritten:

"(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section."

Section 5. This act is effective for taxable years beginning on or after January 1, 1999.

EXPLANATION OF SENATE BILL 396 (2nd Edition):
Downtown Development Zone Improvement

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 14, 1998
SPONSOR: Senator Rand

Senate Bill 396 adds a new section to the William S. Lee Act to allow an income or franchise tax credit for 25% of the cash or property contributed to a development zone agency for a project to construct or improve residential, commercial, or public real property located in a development zone. The bill becomes effective beginning with the 1999 tax year.

A development zone agency is defined in the bill to include a community development corporation, a community development financial institution, or a local housing authority. The development zone agency receiving the contribution must contract in writing to use the contribution for a development zone improvement project and must obtain the certification of the Secretary of Commerce that it will be undertaking such a project.

Another bill, Senate Bill 1569, the Economic Opportunity Act of 1998, provides for the designation of economically distressed areas located within municipalities as State development zones. It defines a development zone as an area (1) consisting of one or more contiguous census tracts, block groups, or both, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000.

The credit is to be taken in the tax year immediately following the contribution year. The total amount of credits for a given tax year is capped at $5 million. To receive the credit, the taxpayer must file an application by April 15 of the year following the contribution year. The Secretary of Revenue may allow this deadline to be extended to September 15. If more than $5 million of credits are applied for, the Secretary of Revenue will reduce each taxpayer's credit proportionally.

The credit is disallowed to the extent the taxpayer receives anything of value in exchange for the contribution. In addition, no credit is allowed for contributions between related parties or parties under common control. If a development zone agency that agreed to use a contribution for a development zone improvement project later uses the project for another purpose, the taxpayer forfeits any credit allowed for the contribution. Development zone agencies certified by the Secretary of Commerce are required to file audited

financial statements with Commerce on an annual basis. If the Department of Commerce determines that a contribution has been used for a purpose other than for a development zone improvement project, it will notify the Secretary of Revenue of the forfeiture.

A proposal similar to this bill was supported by the Governor's Economic Development Board, but was not included in the Governor's recommended budget.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 396 (PCSA872-LC)
SHORT TITLE: Downtown Development Zone Improvement

FISCAL IMPACT

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

	($Million) FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES (GENERAL FUND)			-$5.0	-$5.0	-$5.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The income tax is administered by the Department of Revenue. Development zones are determined by the Department of Commerce.

EFFECTIVE DATE: Tax years beginning on or after January 1, 1999.

BILL SUMMARY: **Provides for a state income or franchise tax credit for 25% of the cash or property contributed to a development zone agency for a project to construct or improve residential, commercial, or public real property located in a development zone.** The credit is to be taken in the tax year immediately following the contribution year. To receive the credit the taxpayer must file an application by April 15 of the year following the contribution year (Secretary of Revenue may allow deadline to be extended to September 15) and the agency receiving the contribution must contract in writing to use the contribution for the project. Development zone agency is defined in the bill to include a community development corporation, a community development financial institution, or a local housing authority.

The total amount of credits for a given tax year is capped at $5.0 million. If more than this amount of credits are applied for, the credits shall be prorated based on application amounts.

ASSUMPTIONS AND METHODOLOGY: Following the practice established in the 1987 fiscal estimate for the qualified business investment credit, the estimated impact is equal to the capped credit. The reason is that it is impossible to predict in advance the potential amount of contributions under the new credit.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: June 29, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 396
Rules and Operations of the Senate Committee Substitute Adopted 6/29/98
Proposed Committee Substitute S396-PCSA888-LC

Short Title: Downtown Development Zone Improvement. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DOWNTOWN REVITALIZATION BY ALLOWING A CREDIT FOR CONTRIBUTIONS FOR DEVELOPMENT ZONE PROJECTS AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE STUDYING DOWNTOWN REVITALIZATION.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that downtowns are central to the creation of small, locally owned businesses and that vital downtowns also play a role in the recruitment of larger businesses. Strong downtowns reduce urban sprawl and the costs and quality of life problems associated with urban sprawl. For these reasons, the General Assembly finds that revitalizing declining urban areas is crucial to the well-being of the State as a whole.

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.13. Credit for contribution for development zone project.**

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project. The credit may not be taken for the year in which the contribution is made but shall be taken

for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (d) of this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal-maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

a. A community development corporation.

b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701, et seq.).

c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone.

(c) Limitations. -- A taxpayer who claims a credit under this section shall identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a

contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(d) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer shall include with the application a certified appraisal of the value of the property contributed.

(e) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d) of this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of five million dollars ($5,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the contribution was made. The Secretary's allocations based on applications filed pursuant to subsection (d) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(f) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce shall file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department shall notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

Section 3. G.S. 105-129.4(a) reads as rewritten:

"(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central

administrative office that creates at least 40 new jobs. A taxpayer is eligible for the credit allowed by G.S. 105-129.13 without regard to the taxpayer's type of business. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing or processing.
(5) Warehousing or distribution.

A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, the taxpayer hires at least 40 additional full-time employees to fill new positions at the office. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection."

Section 4. G.S. 105-129.6(a) reads as rewritten:

"(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section."

Section 5. The Legislative Research Commission shall continue to study downtown revitalization and related issues. The Commission may make an interim report to the 1999 Regular Session of the 1999 General Assembly and shall make a final report to the 2000 Regular Session of the 1999 General Assembly.

Section 6. Section 5 of this act is effective when it becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1408

Short Title: Tax Return Donations for Habitat. (Public)

Sponsors: Senators Wellons; Allran, Carrington, Cochrane, Hartsell, Horton, Jenkins, Ledbetter, Lee, Lucas, Miller, Moore, Purcell, Rand, Reeves, Shaw of Cumberland, Shaw of Guilford, Warren, and Weinstein.

Referred to: Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO MAKE DONATIONS TO HABITAT FOR HUMANITY.

The General Assembly of North Carolina enacts:

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

"**§ 105-269.7. Contribution by individual to Habitat for Humanity.**

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Office of Habitat for Humanity International to provide housing for North Carolina residents with low or moderate incomes. The minimum contribution is five dollars ($5.00) for a joint return and three dollars ($3.00) for any other return. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Department of Commerce, Community Assistance Division. The Department of Commerce shall distribute the funds to the North Carolina Office of Habitat for Humanity International to be used only to provide housing for North Carolina residents with low or moderate incomes. The Secretary shall draw from collections under Part 2 of Article 4 of this Chapter each fiscal year an amount equal to its costs of implementing this section, including costs of

redesigning and expanding the tax forms and instructions, computer reprogramming, and accounting and administration."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1408
Proposed Committee Substitute S1408-PCS6860-LA001

Short Title: Tax Return Donations for Habitat. (Public)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO MAKE DONATIONS TO HABITAT FOR HUMANITY.

The General Assembly of North Carolina enacts:

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

"**§ 105-269.7. Contribution by individual to Habitat for Humanity.**

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Office of Habitat for Humanity International to provide housing for North Carolina residents with low or moderate incomes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Department of Commerce, Community Assistance Division. The Department of Commerce shall distribute the funds to the North Carolina Office of Habitat for Humanity International to be used only to provide housing for North Carolina residents with low or moderate incomes. The Secretary shall draw from collections under Part 2 of Article 4 of this Chapter each fiscal year an amount equal to its costs of implementing this section, including costs of redesigning and expanding the tax forms and instructions, computer reprogramming, and accounting and administration."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 1408 (PCS):
Tax Return Donations for Habitat

TO: Senate Finance Committee
FROM: Martha K. Walston, Committee Counsel
DATE: July 21, 1998
SPONSOR: Senator Wellons

Senate Bill 1408 provides space on the income tax return for individuals to make donations from their tax refunds to the North Carolina Office of Habitat for Humanity International. The bill would become effective beginning with the 1998 tax year, for which most returns are filed April 15, 1999. The Secretary of Revenue will transmit the contributions to the Community Assistance Division of the Department of Commerce. The Department of Commerce will then distribute the funds to the North Carolina Office of Habitat for Humanity International office to provide low-income and moderate-income housing. To cover the costs of implementing this donation process, the Secretary of Revenue will draw the necessary amount from the State income tax collections each fiscal year. The bill, as originally introduced, provided for a minimum contribution of $5.00 for a joint return and $3.00 for any other return.

The North Carolina individual income tax return currently has two other programs to which taxpayers may make voluntary donations of their tax refunds, the Nongame and Endangered Wildlife Fund and the Candidates Financing Fund. Each of these donations takes up a separate line on the form. The Habitat for Humanity donation will take up a third line on the form. The Department of Revenue has indicated that there is no space on the current form for this new donation.

From 1989 until 1996, the number of taxpayers donating to the Wildlife Fund through the tax form has declined from about 47,000 to 33,000 and the annual donations have declined from about $479,000 to $336,000. For the same period, the number of taxpayers donating to the Candidates Financing Fund through the tax form has declined from about 7,000 to 4,700 and the annual donations have fluctuated between about $18,000 (1993) and $26,600 (1989).

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1408 (Senate Proposed Committee Substitute)

SHORT TITLE: Tax Return Donations to Habitat

SPONSOR(S): Senator Wellons

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
EXPENDITURES					
General Fund	$42,809	$3,859	$3,859	$3,859	$3,859

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Department of Commerce

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The bill provides space on the income tax return for individuals to make donations from their tax refunds to the North Carolina Office of the Habitat for Humanity International. The Secretary of Revenue transmits the donations to the State Treasurer who will credit the funds to the Community Assistance Division in the Department of Commerce. The Department of Commerce will distribute the funds to the Habitat for Humanity for housing for North Carolina residents with low or moderate incomes.

BACKGROUND: North Carolina currently has two tax refund donation "checkoff" funds. In 1983, the General Assembly allowed taxpayers to contribute to the NC Nongame and Endangered Wildlife Fund. 75% of the donated funds are used for nongame, endangered and threatened species and urban wildlife programs, and 25% of the funds are for other wildlife programs chosen by the Wildlife Resources Commission. The other checkoff is the NC Candidates Financing Fund created in 1991. This fund offers financial assistance to gubernatorial candidates who agree to campaign expenditure limits and a post election audit.

Of the 2.1 million refund checks written in 1996, only 32,905 returns designated $335,852 in contributions to the NC Nongame and Endangered Wildlife Fund. The average contribution was

$10.21. Another 4,497 returns donated $22,139 to the NC Candidates Financing Fund. The average contribution was $4.92.

ASSUMPTIONS AND METHODOLOGY: The bill allows the Department of Revenue to recoup the cost of administering this program from the General Fund, "including costs of redesigning and expanding the tax forms and instructions, computer reprogramming, and accounting and administration". The Department estimates a one-time cost of $38,950 for computer programming changes. The Department anticipates an annual expense of $3,859 to hire temporaries for data entry of the refund contributions.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 21, 1998

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-22-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C. Assoc. of Co. Comm.
Andrea Harris	NCIMED
Jonathan Morgan	NCIMED
Brandon Alexander	NCDOC
Stephanie Mann	NC Assoc. of REALTORS
Debra Swain	NC DOR
Tonya Robinson	Institute of Government. UNC
Peg Carlson	Institute of Government - UNC
Frayda Bluestein	IOG
Kathy Murphy	IOG
Doug Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-22-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NCHBA
Patti Seawell	NC DOR
Greg Radford	NC DOR

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, July 22, 1998

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

FAVORABLE

H.B. **1352** Repeal Cabarrus Initiative Law
Sequential Referral: None
Recommended Referral: None

H.B. **1549** Currituck/Beach Driving Penalty
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, July 23, 1998

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)396 Downtown Development Zone Improvement

Draft Number:	PCSA888
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up in Committee on 7-22-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JULY 28, 1998

12 NOON - ROOM 544

SB 850 - Spay/Neuter Program - Sen. Kinnaird

SB 1571 - Regulate Ticket Broker's Fee - Sen. Hoyle

HB 1356 - Electronic Commerce Act - Rep. Baker

SENATE FINANCE COMMITTEE

TUESDAY, JULY 28, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, July 28, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 22 committee members present. The pages were Keturi DeLong Frisco from Cape Hatteras, sponsored by Senator Basnight, and Suzi Salter from Raleigh, sponsored by Senator Reeves.

S.B. 850 - Spay/Neuter Program.

Senator Kinnaird was recognized to explain her bill. On motion by Senator Hoyle, a Committee Substitute was adopted by the Committee. Ms. Cindy Avrette, Staff Attorney, was called on for a further explanation of this bill. After a long discussion with nearly all Committee members participating, staff was requested to draw an amendment to this bill. Nancy Ritch from Raleigh and representing the Humane Society spoke in support of this bill. Andy Romanet, representing the NC League of Municipalities, spoke in opposition to this bill, stating it could result in an expensive mandate on local governments. Tom Currin, Veterinarian from Raleigh, spoke in opposition to this bill. After many questions and much discussion, the Chairs elected to hold this bill for further discussion at another meeting. Copy of original Bill and Committee Sub included in the Minutes.

S.B. 1571 - Regulate Ticket Broker's Fee.

Senator Hoyle was recognized to explain his bill and moved for the adoption of a Committee Substitute. Motion carried. After Senator Hoyle's explanation and questions by the Committee members, Allen Hurst with the Attorney General's Office and the Consumer Division, stated that other states have very serious problems with this type of regulations. After further discussion on the bill, Senator Kerr announced that this bill will be held over at the sponsor's request. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

HB 1356 not heard in committtee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 850

Short Title: Spay/Neuter Program. (Public)

Sponsors: Senators Kinnaird; Forrester, Foxx, Jenkins, Kincaid, Ledbetter, McDaniel, Miller, Perdue, Reeves, and Wellons.

Referred to: Finance.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO ESTABLISH YEAR-ROUND LOW-COST SPAYING AND NEUTERING PROGRAMS TO BE FUNDED SOLELY BY TAXES AND FEES PAID BY PET OWNERS.

The General Assembly of North Carolina enacts:

Section 1. Article 34 of Chapter 106 of the General Statutes is amended by adding a new Part to read:

"Part 6A. Spay/Neuter Fund.

"**§ 106-363.5. Spay/Neuter Fund established; distributions to counties.**

(a) The Spay/Neuter Fund is established in the Animal Welfare Section of the Department of Agriculture. The Secretary of Agriculture shall make rules consistent with this section for the distribution at least annually of all monies in the Fund to eligible counties.

(b) Counties eligible to receive distributions from the Spay/Neuter Fund are those for which the Secretary has approved a plan filed under or consistent with the provisions of G.S. 153A-153 for expenditure of funds to reduce the cost of spaying and neutering procedures. Counties with approved plans shall receive distributions from the Fund based on relative population, except that a county's distributive share shall be increased by five percent (5%) for each full 10,000 in population below 100,000.

(c) If a county is not eligible under subsection (b) of this section, distribution of monies in the Spay/Neuter Fund may be made to a city in that county, based on relative population of the city, provided that the city has approval by the Secretary of

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 850
PROPOSED COMMITTEE SUBSTITUTE
S850-CSRBX-1

Short Title: Spay/Neuter Program. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPAY/NEUTER FUND TO BE USED TO SUPPORT A STATEWIDE EDUCATIONAL PROGRAM ON THE BENEFITS OF SPAYING AND NEUTERING PETS AND TO HELP COUNTIES PROVIDE LOW-COST SPAYING AND NEUTERING PROCEDURES FOR DOGS AND CATS, TO IMPOSE A ONE DOLLAR ($1.00) FEE ON RABIES VACCINATIONS TO RAISE MONEY FOR THE SPAY/NEUTER FUND, AND TO REQUIRE COUNTIES AND CITIES THAT LEVY AN ANIMAL TAX TO CHARGE A GREATER TAX ON DOGS AND CATS THAT ARE NOT SPAYED OR NEUTERED.

The General Assembly of North Carolina enacts:

Section 1. Article 34 of Chapter 106 of the General Statutes is amended by adding a new Part to read:

"Part 6A. Spay/Neuter Fund.

"§ 106-363.5. Spay/Neuter Fund established; education program; distributions to counties.

(a) Spay/Neuter Fund. -- The Spay/Neuter Fund is established in the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services as a nonreverting special revenue account consisting of funds credited to or deposited in the Fund under G.S. 106-363.6, G.S. 153A-153, G.S. 160A-212, or any other provision of law. The money in the Fund shall be used for the following purposes:

(1) Up to twenty percent (20%) of the money in the Fund may be used by the Department to educate the public on the benefits of having pets spayed and neutered.

(2) The remainder of the money in the Fund shall be distributed at the end of each fiscal year to counties eligible to receive a distribution from the Fund under the provisions of subsection (c) of this section.

(b) Statewide Education Program. -- The Department of Agriculture and Consumer Services shall establish a Statewide education program to educate the public on the benefits of having dogs and cats spayed and neutered. The Department may use up to twenty percent (20%) of the money in the Fund to defray the costs of providing staff to the program and may employ outside consultants to assist with the program. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine at Raleigh, with other departments of State government, with municipal health and animal control departments, and with Statewide and local humane organizations.

(c) County Spay/Neuter Programs. -- To receive a distribution of money from the Spay/Neuter Fund, a county must apply to the Department of Agriculture and Consumer Services by March 15 of each year. A county is eligible to receive a distribution from the Fund if it offers one or more of the following programs on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

(1) A county-operated spay/neuter clinic.

(2) A spay/neuter clinic operated by a private organization under contract or other arrangement with the county.

(3) A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

(4) Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spay or neuter procedure fixed by a participating veterinarian or other provider.

(5) Subvention of the costs of spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with any city or county.

The Department shall distribute the money in the Fund to the eligible counties in proportion to the number of dogs and cats that have received a rabies vaccination during the preceding fiscal year in that county. A county receiving distributions from the Spay/Neuter Fund may spend the money only on programs that lower the cost of spaying and neutering dogs and cats.

"**§ 106-363.6. Fee on rabies vaccination.**

(a) Fee. -- A fee of one dollar ($1.00) is payable by the owner of a dog or cat when the dog or cat receives a rabies vaccination. The fee is payable to the licensed veterinarian or certified rabies vaccinator that administers the rabies vaccination. The licensed veterinarian or certified rabies vaccinator must submit the fees collected under this subsection to the Animal Welfare Section of the Department of Agriculture and Consumer Services within 30 days after the end of each calendar quarter. The Department shall credit these payments to the Spay/Neuter Fund established in G.S. 106-363.5.

(b) Exception. -- The fee in subsection (a) of this section does not apply to rabies vaccinations administered at a countywide rabies vaccination clinic where the fee charged for the rabies vaccination is set by the county board of commissioners under G.S. 130A-188.

"**§ 106-363.7. Report by Veterinary Public Health Director.**

The Veterinary Public Health Director in the Department of Health and Human Services shall report to the Director of the Animal Welfare Section of the Department of Agriculture and Consumer Services on the number of rabies vaccination tags sold to licensed veterinarians and certified rabies vaccinators."

Section 2. G.S. 153A-153 reads as rewritten:

"**§ 153A-153. Animal tax.**

(a) Animal tax. -- A county may levy an annual license tax on the privilege of keeping dogs and other pets within the county.

(b) Spay/Neuter tax. -- A county that levies an annual license tax under subsection (a) of this section must impose a higher tax on the privilege of keeping a dog or cat that has not been spayed or neutered. The amount of tax levied for a dog or cat that has not been spayed or neutered must be at least four times the annual tax for a dog or cat that has been spayed or neutered, as certified by a veterinarian. This tax does not apply to a registered dog or cat breeder under subsection (d) of this section.

(c) Use of tax proceeds. -- The tax revenue derived under subsection (a) may be used for any public purpose. At least one-third of the tax revenue derived under subsection (b) must be

used to reduce the costs of spaying and neutering dogs and cats. The remainder of the revenue derived under subsection (b) may be used for any public purpose.

(d) Registered dog or cat breeder. -- An owner of five or more dogs or cats may register annually with the Animal Welfare Section of the Animal Health Division of the Department of Agriculture on forms to be provided by the Section as a 'registered dog or cat breeder' upon payment of an annual fee of twenty-five dollars ($25.00). The registration is valid for one year. The fees collected under this subsection shall be deposited in the Spay/Neuter Fund established in G.S. 106-363.5."

Section 3. G.S. 160A-212 reads as rewritten:

"**§ 160A-212. Animal taxes.**

(a) Animal tax. -- A city shall have power to levy an annual license tax on the privilege of keeping any domestic animal, including dogs and cats, within the city. This section shall not limit the city's authority to enact ordinances under G.S. 160A-186.

(b) Spay/Neuter tax. -- A city that levies an annual license tax under subsection (a) of this section must impose a higher tax on the privilege of keeping a dog or cat that has not been spayed or neutered. The amount of tax levied for a dog or cat that has not been spayed or neutered must be at least four times the annual tax for a dog or cat that has been spayed or neutered, as certified by a veterinarian. This tax does not apply to a registered dog or cat breeder under subsection (d) of this section.

(c) Use of tax proceeds. -- The tax revenue derived under subsection (a) may be used for any public purpose. At least one-third of the tax revenue derived under subsection (b) must be used to reduce the costs of spaying and neutering dogs and cats. The remainder of the revenue derived under subsection (b) may be used for any public purpose.

(d) Registered dog or cat breeder. -- An owner of five or more dogs or cats may register annually with the Animal Welfare Section of the Animal Health Division of the Department of Agriculture on forms to be provided by the Section as a 'registered dog or cat breeder' upon payment of an annual fee of twenty-five dollars ($25.00). The registration is valid for one year. The fees collected under this subsection shall be deposited in the Spay/Neuter Fund established in G.S. 106-363.5."However, any tax on the privilege of keeping a dog that has not been spayed or neutered shall be at least four times the annual tax

for a dog that has been spayed or neutered, as certified by a veterinarian.

Section 4. This act becomes effective January 1, 1999, and applies to taxes levied and fees collected on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1571

Short Title: Regulate Ticket Broker's Fee. (Public)

Sponsors: Senators Hoyle, Shaw of Guilford; Albertson, Ballance, Blust, Carpenter, Carrington, Cooper, Dalton, Foxx, Garwood, Hartsell, Horton, Jenkins, Ledbetter, Lee, Martin of Pitt, Odom, Perdue, Plyler, Purcell, Rand, Reeves, Rucho, Soles, Warren, Weinstein, and Wellons.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION AND BONDING OR THE ESTABLISHMENT OF A TRUST ACCOUNT BY TICKET BROKERS, TO REQUIRE SALES BY A TICKET BROKER TO TAKE PLACE OFF THE PROPERTY WHERE THE EVENT IS TO BE HELD AND TO LIMIT SALES BY A TICKET BROKER TO NO MORE THAN ONE PERCENT OF THE TOTAL TICKETS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 32.

"Ticket Brokers.

"**§ 66-250. Definitions.**

As used in this Article, unless the context clearly provides otherwise, the following terms shall have the following meanings:

(1) 'Promoter' means a person who assumes the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(2) 'Ticket' means a certificate or token showing that a fare or admission fee has been paid.

(3) 'Ticket Broker' means a person who is involved in the business of reselling tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions to which the general public is admitted, and charges a premium in excess of the price printed on the ticket.

"§ 66-251. General requirements.

A Ticket Broker shall:

(1) Maintain a permanent office or place of business, excluding a post office box, for the purpose of engaging in the business of a Ticket Broker;

(2) Obtain any business license required by the State or appropriate local government;

(3) Post at its established place of business the purchaser's right to cancel the purchase of a ticket from the Ticket Broker and receive a full refund if the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such return is made more than 72 hours preceding the athletic contest or entertainment event;

(4) Refund any payment received for the purchase of a ticket under this Article if the athletic contest or entertainment event is cancelled and not rescheduled;

(5) Disclose to the purchaser in writing the difference between the price printed on the ticket and the amount which the Ticket Broker is charging for such ticket; and

(6) Meet the requirements of registration, bonding or the establishment of a trust account pursuant to this Article.

"§ 66-252. Bond or trust account required.

A Ticket Broker shall obtain a surety bond issued by a surety company authorized to do business in this State or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be two hundred thousand dollars ($200,000). The bond or trust account shall be in favor of the State of North Carolina. Any person damaged by the Ticket Broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the bond or trust account to recover damages suffered. The aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

"§ 66-253. Prohibitions.

A Ticket Broker and employees or agents of that Ticket Broker may not:

(1) Engage in the practice of selling, or attempting to sell, tickets for an athletic contest or entertainment event on the property where the athletic contest or entertainment event is to be held; or

(2) Acquire and resell in excess of one percent (1%) of the total tickets allocated for the athletic contest or entertainment event,

unless a Ticket Broker has a written contract with the promoter or operator of the property on which an athletic contest or entertainment event is to be held, which contract authorizes the Ticket Broker to resell more than one percent (1%) of the total tickets allocated for such event.

"**§ 66-254. Filing with the Secretary of State.**

(a) Prior to placing any advertisement or making any other representations to prospective buyers in this State, every Ticket Broker shall file with the Secretary of State a registration form provided by that office, and either a copy of the bond required by G.S. 66-252, or a copy of the formal notification by the depository that the trust account required by G.S. 66-252 is established, accompanied by an annual fee in the amount of two thousand five hundred dollars ($2,500) made payable to the Secretary of State. An annual renewal fee of two thousand five hundred dollars ($2,500) must be paid to the Secretary of State. These filings shall be updated as any material changes in the required information or the status of the bond or trust account occur, but no less than annually.

(b) The filing shall contain the following:

(1) The name and principal place of business of the Ticket Broker.

(2) A statement describing the activities of the Ticket Broker to include that the Ticket Broker:

a. Engages in the resale of admission tickets on a regular and ongoing basis from one or more permanent or fixed locations within this State;

b. Maintains as the principal business activity at those locations the resale of tickets;

c. Displays at those locations the Ticket Broker's registration; and

d. Maintains at those locations a listing of the names and addresses of all persons employed by the Ticket Broker.

(c) Failure to comply with the requirements of this section shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

"**§ 66-255. Penalties.**

Any person, firm, or corporation that violates any of the provisions of this Article for which there is no prescribed penalty is guilty of a Class 2 misdemeanor."

Section 2. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the

first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to sales pursuant to Article 32 of Chapter 66 of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1571
Proposed Committee Substitute S1571-PCS2905-LB001

Short Title: Regulate Ticket Broker's Fee. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION AND BONDING BY TICKET BROKERS, TO REQUIRE SALES BY A TICKET BROKER TO TAKE PLACE OFF THE PROPERTY WHERE THE EVENT IS TO BE HELD AND TO LIMIT SALES BY A TICKET BROKER TO NO MORE THAN ONE PERCENT OF THE TOTAL TICKETS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 32.

"Ticket Brokers.

"**§ 66-250. Definitions.**

As used in this Article, unless the context clearly provides otherwise, the following terms shall have the following meanings:

(1) 'Promoter' means a person, firm, or corporation who assumes the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(2) 'Ticket' means a certificate or token showing that a fare or admission fee has been paid.

(3) 'Ticket Broker' means a person, firm, or corporation who resells one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or

exhibitions to which the general public is admitted, and charges a premium in excess of three dollars ($3.00) above the price printed on the ticket and meets the requirements of registration and bonding pursuant to this Article.

"**§ 66-251. General requirements.**

A Ticket Broker shall:

(1) Maintain a permanent office or place of business within this State, excluding a post-office box, for the purpose of engaging in the resale of admission tickets on a regular and ongoing basis;

(2) Maintain as the principal business activity at those locations the resale of tickets;

(3) Obtain any business license required by the State or appropriate local government;

(4) Post in a prominent place at its place of business the certificate of registration and the registration form required under this Article;

(5) Refund any payment received for the purchase of a ticket under this Article if during normal business hours the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such request is made more than 72 hours preceding the athletic contest or entertainment event;

(6) Refund any payment received for the purchase of a ticket under this Article if the athletic contest or entertainment event is cancelled and not rescheduled;

(7) Post in a prominent place at its place of business the requirements of subdivisions (5) and (6) of this section;

(8) Disclose to the purchaser in writing the difference between the price printed on the ticket and the amount which the Ticket Broker is charging for such ticket; and

(9) Maintain the following records regarding tickets which may be resold under this Article:

a. The name, address, and telephone number of the person, firm, or corporation from whom the ticket was purchased, unless the seller is an individual reselling such ticket acquired for personal use;

b. The date the ticket was acquired;

c. The name, date, and location of the event for which the ticket grants admission, and the location of the ticket in the venue, including where applicable, section, row, and seat number; and

d. The price at which the broker resold the ticket.

Any complaint regarding any provision of this Article shall be filed with the Office of the Attorney General. Upon request by the Office of the Attorney General, the

Ticket Broker shall provide these records to the Office of the Attorney General for its inspection.

"**§ 66-252. Bond required.**

A Ticket Broker shall obtain a bond issued by a surety company authorized to do business in this State. The amount of the bond shall be two hundred thousand dollars ($200,000). The bond shall be in favor of the State of North Carolina for the benefit of any person who is damaged by the Ticket Broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article. Any person claiming against the bond may maintain an action at law against the Ticket Broker and surety. The aggregate liability of the surety shall be only for actual damages and in no event shall exceed the amount of the bond.

"**§ 66-253. Prohibitions.**

(a) A Ticket Broker and employees or agents of that Ticket Broker may not:

(1) Engage in the practice of selling, or attempting to sell, tickets for an athletic contest or entertainment event on the property where the athletic contest or entertainment event is to be held;

(2) Acquire or resell in excess of one percent (1%) of the total tickets for the athletic contest or entertainment event; or

(3) Pay any consideration, directly or indirectly, to any promoter, operator, or ticket sales agent to acquire or assist in the acquisition of a ticket, except for the actual face value cost of the ticket and any service fee authorized by G.S. 14-344(a).

(b) A promoter, operator, or ticket sales agent may not receive any consideration, directly or indirectly, from any person, firm, or corporation to acquire or assist in the acquisition of a ticket, except for the actual face value cost of the ticket and any service fee authorized by G.S. 14-344(a).

"**§ 66-254. Filing with the Secretary of State.**

(a) Prior to placing any advertisement or making any other representations to prospective buyers in this State, every Ticket Broker shall file with the Secretary of State a registration form provided by that office, and a copy of the bond required by G.S. 66-252, accompanied by an annual fee in the amount of two thousand five hundred dollars ($2,500) made payable to the Secretary of State. An annual renewal fee of two thousand five hundred dollars ($2,500) must be paid to the Secretary of State. These filings shall be updated as any changes in the required information or the status of the bond occur, but no less than annually.

(b) The filing shall contain the following:

(1) The name and place of business of the Ticket Broker.

(2) A statement describing the activities of the Ticket Broker to include that the Ticket Broker:

a. Engages in the resale of admission tickets on a regular and ongoing basis from one or more permanent or fixed locations within this State;

b. Maintains as the principal business activity at those locations the resale of tickets;

c. Posts in a prominent place at those locations the Ticket Broker's certificate of registration and registration form; and

d. Maintains at those locations a listing of the names and addresses of all persons employed by the Ticket Broker.

(c) Upon finding that a Ticket Broker has complied with the requirements of subsections (a) and (b) of this section, the Secretary of State shall issue the Ticket Broker a certificate of registration.

(d) Failure to comply with the requirements of subsections (a) and (b) of this section shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

"**§ 66-255. Penalties.**

Any registered Ticket Broker that violates any of the provisions of this Article for which there is no prescribed penalty is guilty of a Class 2 misdemeanor. Any person, firm, or corporation in violation of G.S. 66-253(a)(3) or (b) shall be guilty of a Class I felony."

Section 2. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to sales pursuant to Article 32 of Chapter 66 of the General Statutes."

Section 3. This act is effective 30 days after it becomes law.

EXPLANATION OF SENATE BILL 1571(PCS):
Regulate Ticket Broker's Fee

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 27, 1998
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1571 creates a new article in the Commerce and Business Chapter of the General Statutes that applies to the regulation of ticket brokers. Changes enacted by the PCS are in bold. A ticket broker is a "person, firm or corporation who resells tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions to which the general public is admitted, and charges a premium in excess of **$3.00 above** the price printed on the tickets **and meets the requirements of registration and bonding.**"

Broker requirements.--A ticket broker must meet the following requirements:

- Maintain a permanent place of business **in the State** as a ticket broker.
- Maintain as the principal business activity the resale of tickets.
- Obtain any business license required by the State or local government.
- **Post the certificate of registration and the registration form required under the new Article.**
- Refund payment received for the purchase of a ticket if the purchaser returns the ticket and requests cancellation of the sale within 36 hours after the purchase and more than 72 hours before the event.
- Refund payment for ticket if event is cancelled and not rescheduled.
- Post the above refund requirements.
- Disclose to the purchaser in writing the difference between the price on the ticket and the amount charged by the ticket broker
- **Maintain certain records about tickets which may be resold.**

Any complaint regarding a provision under the new Article is to be filed with the Attorney General. If the Attorney General makes a request, the ticket broker must provide him with the records the broker is required to maintain.

Bond required.--Each ticket broker must obtain a $200,000 bond in favor of the State for the benefit of any person damaged by a ticket broker's breach of contract or violation of the Article. The aggregate liability of the surety shall only be for actual damages and shall not exceed the amount of the bond. **The original bill required a broker to either obtain a $200,000 bond or establish a trust account in the amount of $200,000.**

Prohibitions. – A ticket broker and the broker's employees are prohibited from (1) selling tickets on the property where the event is to be held, (2) acquiring or reselling more than 1% of the total tickets for the event, or **(3) paying any consideration to a promoter, operator, or ticket sales agent to acquire a ticket, except for the face value cost of the ticket and service fee that the public would pay. The original bill allowed a broker to resell more than 1% of the total tickets if the broker had a contract with the promoter or operator authorizing the resell. A promoter, operator, or ticket sales agent is also prohibited from receiving consideration to acquire a ticket, except for the face value cost of the ticket and service fee that the general public would pay.**

Filing requirements.--A broker must file with the Secretary of State , a registration form and a copy of the required bond. The broker must also pay an annual fee of $2,500 to the Secretary of State. The registration form must contain the name and place of business and a description of the broker's activities. Failure to comply with the filing requirements is punishable by a $25 fine for the first offense and a $75 fine for each succeeding offense.

Penalties.--If there is no prescribed penalty for a violation of the Article, then the broker is guilty of a Class 2 misdemeanor. **Any person, firm, or corporation that violates the prohibition against paying or receiving consideration to acquire a ticket, except for the actual face value cost and any service fee that the public would pay, is guilty of a Class I felony.**

Exemption.--The Article exempts brokers from the criminal statute dealing with scalping. This statute allows anyone to add a reasonable service fee to the face value of tickets sold as long as the fee does not exceed $3.00. An exception is made if a promoter or operator of the property where the event is to be held and a ticket sales agency agree in writing on a greater fee for the first sale of tickets by the ticket sales agent. The existence of the service fee must be shown on the tickets. A violation of this criminal statute is a Class 2 misdemeanor.

Effective date. – The act is effective 30 days after it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1571 (Proposed Committee Substitute)

SHORT TITLE: Regulate Ticket Broker's Fee

SPONSOR(S): Senator Hoyle, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$22,500	$22,500	$22,500	$22,500	$22,500
EXPENDITURES					
Sec. of State	see **ASSUMPTIONS AND METHODOLOGY**				
Dept. of Correction	No Fiscal Impact				
Judicial Department	No Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Secretary of State; Office of the Attorney General

EFFECTIVE DATE: This act is effective 30 days after it becomes law.

BILL SUMMARY: This act sets general requirements for ticket brokers, mandates that ticket brokers obtain $200,000 surety bonds, and requires ticket brokers to register with the Department of Secretary of State.

ASSUMPTIONS AND METHODOLOGY:

Revenue

This bill requires ticket brokers to pay an annual $2,500 registration fee to the Department of Secretary of State. The Department estimates that between 2 and 15 ticket brokers will apply for registration. This fiscal note will assume the midpoint or 9 registrations per year. This number is reasonable given that 11 national ticket brokers were found in an internet search conducted by

Fiscal Research on July 27, 1998. With 9 registrations, the Department will collect $22,500 for deposit into the General Fund.

Expenditures

The Department of Secretary of State estimates that it will take a ¼ time clerical position to administer the registration program for ticket brokers. The Department recommends a grade 63 Administrative Assistant I position at a cost of $6,600. The Department could fund a temporary position each year by using salary reserve. The use of salary reserve requires approval from the Office of State Budget and Management, but does not require an appropriation.

The bill sets Class I felony and Class 2 misdemeanor charges for violation of the ticket broker act. Data is not readily available to calculate the bill's impact on the court system, but the Administrative Office of the Courts (AOC) does not believe this bill will have a substantial fiscal impact. The creation of the new Class I felony and Class 2 misdemeanor charges could increase the number of cases coming through the courts, but the AOC has no evidence to suggest that these registered ticket brokers will not comply with the new regulations. The AOC also notes that individuals who "scalp" tickets without following the registration requirements would be prosecuted under the existing misdemeanor charge. Similarly, the Sentencing Commission does not expect this bill to have a significant impact on the state prison system. The charges might affect county jail populations, but few cases are expected.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 27, 1998

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JULY 28, 1998

ON THE FLOOR - SESSION RECESS

HB 860 - Calabash/Carolina Shores

SENATE FINANCE COMMITTEE

TUESDAY, JULY 28, 1998

ON THE FLOOR

DURING SESSION

The Senate Finance Committee met on the Floor of the Senate while in recess on Tuesday July 28, 1998, with Senator John Kerr presiding. Committee members present were members attending session.

H.B. 860 - Calabash/Carolina Shores.

H.B. 860 (C.S. # 2) was explained to the Committee members and Senator Soles offered an Amendment which was adopted on his motion. Senator Webster moved for a Favorable Report for H.B. 860, as amended, and the motion was approved by the Committee. Copy of Bill and Amendment included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 860*
Committee Substitute Favorable 7/3/97
Committee Substitute #2 Favorable 7/22/98

Short Title: Calabash/Carolina Shores. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CAROLINA SHORES FROM AN AREA PREVIOUSLY ANNEXED INTO THE TOWN OF CALABASH.

The General Assembly of North Carolina enacts:

Section 1. (a) The area annexed to the Town of Calabash by Section 1 of Chapter 593 of the Session Laws of 1989 is removed from the corporate limits of the town.

This section shall have no effect upon the validity of any liens of the Town of Calabash for ad valorem taxes or special assessments outstanding before the effective date of this section, and such liens may be collected or foreclosed upon after the effective date of this section as though the property were still within the corporate limits of the Town of Calabash. Notwithstanding the previous sentence, if the Town of Carolina Shores is not incorporated as provided by Sections 2 through 7 of this act, the ad valorem taxes for fiscal year 1998-99 for the area removed from the Town of Calabash by this section are released and the liens shall not attach.

(b) The Brunswick County Board of Elections shall conduct an election on September 15, 1998, for the purpose of submission to the qualified voters of District 1 of the Town of Calabash and to the qualified voters of District 2 of the Town of Calabash the question of whether or not the area described in subsection (a) of this section shall be removed from the corporate limits of the Town of Calabash.

(c) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Removal of Carolina Shores from the corporate limits of the Town of Calabash."

(d) In such election, if a majority of the votes cast in either District 1 or District 2 shall be cast "FOR" the question, then subsection (a) of this section is effective on the date that the Brunswick County Board of Elections determines the result of the election. In such case, from that date until the organizational meeting after the 1999 municipal election, the members of the Board of Commissioners of the Town of Calabash are Sam Bierworth, Forrest King, Keith Hardee, Robert Simmons, Rosemary Raleigh, and John Collins. They shall choose a Mayor from among the members of the Board to serve until the organizational meeting after the 1999 municipal election.

(e) In such election, if a majority of the votes cast in both District 1 and District 2 are not cast "FOR" the question, then subsection (a) of this section shall have no force and effect.

(f) Beginning with the organizational meeting after the 1999 municipal election, the Board of Commissioners of the Town of Calabash consists of four members.

Section 2. A Charter for the Town of Carolina Shores is enacted to read:

"CHARTER OF THE TOWN OF CAROLINA SHORES.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Sec. 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Carolina Shores are a body corporate and politic under the name 'Town of Carolina Shores'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Carolina Shores are those annexed to the Town of Calabash by Section 1 of Chapter 593 of the Session Laws of 1989.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Carolina Shores is the Town Board of Commissioners and the Mayor. The Town Board of Commissioners has five members.

"Sec. 3.2. **Manner of Electing Board.** The qualified voters of the entire Town elect the members of the Board of Commissioners.

"Sec. 3.3. **Term of Office of Board Members.** (a) Alden Craft, George Dale, John Elliott, Robert Lovaty, and Edwin Mugridge are appointed as members of the Board of Commissioners to serve until the organizational meeting after the 1999 municipal election.

(b) In 1999 five members of the Board of Commissioners are elected. The three persons receiving the highest numbers of votes are elected to four-year terms and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two members of the council are elected

to four-year terms. In 2003 and quadrennially thereafter, three members of the council are elected to four-year terms.

"Sec. 3.4. **Selection of Mayor; Term of Office.** The qualified voters of the entire Town elect the Mayor. Theodora Altreuter shall serve as Mayor to serve until the organizational meeting after the 1999 municipal election. A Mayor shall be elected in 1999 and quadrennially thereafter for a four-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** The Town Board of Commissioners shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Mayor-Board Plan.** The Town of Carolina Shores operates under the Mayor-Board of Commissioners plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"CHAPTER VI.

"PLANNING.

"Sec. 6.1. **Extraterritorial Jurisdiction.** The area to the north of North Carolina Highway 179 and Thomasboro Road which was within the extraterritorial jurisdiction of the Town of Calabash under Article 19 of Chapter 160A of the General Statutes and which is not in the Town limits of the Town of Calabash is placed within the extraterritorial jurisdiction of the Town of Carolina Shores under Article 19 of Chapter 160A of the General Statutes upon the adoption of a zoning ordinance by the Town of Carolina Shores.

"Sec. 6.2. **Applicability of Calabash Planning Ordinances.** Any regulations and powers of enforcement of the Town of Calabash under Article 19 of Chapter 160A of the General Statutes shall remain in effect within the Town of Carolina Shores until the earlier of: (i) the Town of Carolina Shores adopting such regulations, or (ii) 60 days after the incorporation is effective. During this period the Town of Carolina Shores may hold hearings and take any other measures that may be required in order to adopt its regulations for the area under that Article."

Section 3. From and after January 1, 1999, the citizens and property in the Town of Carolina Shores shall be subject to municipal taxes levied for the year beginning January 1, 1999, and for that purpose the Town shall obtain from Brunswick County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town of Carolina Shores shall not levy any ad valorem taxes or privilege license taxes for the 1998-99 fiscal year.

Section 4. The boundaries of the Town of Calabash are as follows:

BEGINNING at a point where the North Carolina-South Carolina State line intersects the Northern Right-of-Way of NC Highway 179 (60' R/W); thence with said Right-of-Way, S 88 16' 47"E, 419.92'; S 82 10' 09"E, 1022.11'; N 87 34' 25"E,

619.79'; N 77 30' 00"E, 205.42'; N 76 45' 07"E, 125.12' to a point where said Northern Right-of-Way intersects the Eastern Right-of-Way of SR 1168, Country Club Drive; thence with said eastern right-of-way N 03 49' 49"E, 61.55'; N 04 12' 15"E, 43.00'; N 03 54' 03"E, 218.87' to the Northwest corner of Tract #7, CLA Properties, Inc., as Recorded in Map Cabinet "K", Page 44 of the Brunswick County Register of Deeds; thence with the Northern line of Tract #7, N85 32'33"E, 762.30' to the Northeast corner of said Tract #7; thence with the Boundary lines of CLA Properties, Inc., as shown in Map Cabinet "K", Page 44 the following bearings and distances: N 85 32' 33"E, 250.00'; N 82 04' 15"E, 439.56'; N 87 00' 46"W, 779.48'; N 30 14'30"W, 1506.91'; N 60 36'40"E, 452.61'; N 30 33' 19"W, 1842.10' to the Southwest corner of Saltaire Village; thence with the Southern lines of Saltaire Village; N 60 58' 58"E, 698.43'; N 60 58'01"E, approximately 628.50' to a point in the Eastern Right-of-Way of SR 1167 (60'R/W) thence with said Right-of-Way in a Northerly direction to the Southwest corner of Carolina Shores Acreage Estates as Recorded in Map Book 13, Page 4 of the Brunswick County Register of Deeds; thence with the Southern Boundary line of Carolina Shores Acreage Estates approximately 1230' to a point; thence with the Western Boundary line of Acreage Estates, a common line with Hunters Trace Subdivision as Recorded in Map Cabinet "O", Page 332, a southerly direction to a point projected to the Southern Right-of-way of SR 1165; thence with said Right-of-Way in an Easterly Direction to the Northwest corner of Calabash Acres as recorded in Map Book 9, Page 39 of The Brunswick County Register of Deeds; thence with the Western lines of Calabash Acres in a Southerly direction to a point in the Thread of the Calabash River; thence down said river and along the thread to a point where it intersects the North Carolina-South Carolina State line; thence with said State line N 44 37' 44"W to the Place and Point of BEGINNING. The boundaries also include any areas annexed to the Town of Calabash under Article 4A of Chapter 160A of the General Statutes after December 31, 1996, that might not be included in the description above.

Section 5. (a) The Brunswick County Board of Elections shall conduct an election on the same date as the referendum provided by Section 1 of this act, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Carolina Shores, the question of whether or not such area shall be incorporated as Carolina Shores. Registration for the election shall be conducted in accordance with G.S. 163-288.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of Carolina Shores".

Section 6. In such election, if either a majority of the votes cast are not cast "FOR Incorporation of Carolina Shores", or if the question proposed by Section 1(c) of this act is not approved as provided by that section, then Sections 2 through 4 of this act shall have no force and effect.

Section 7. In such election, if a majority of the votes cast shall be cast "FOR Incorporation of Carolina Shores", and if the question proposed by Section 1(a) of this act is approved as provided by that section, then Sections 2 through 4 of

this act shall become effective on the date that the Brunswick County Board of Elections determines the result of the election.

Section 8. (a) The Board of Commissioners of the Town of Calabash shall, prior to the date of the referendum provided by this act, adopt a fair and equitable plan for the distribution of the assets and liabilities, other than those set aside by subsection (b) of this section, of the Town of Calabash between the Town of Calabash and the Town of Carolina Shores. The plan must be approved by the Local Government Commission. If the Board of Commissioners of the Town of Calabash fails to adopt such a plan by the deadline provided by this subsection, then the Local Government Commission shall adopt a fair and equitable plan.

The plan adopted under this section shall include among the assets the ad valorem tax levy of the Town of Calabash for the 1998-99 fiscal year and any other shared revenues received by the Town of Calabash during the 1998-99 fiscal year (such as local option sales taxes), such that the proceeds may be divided between the two towns to support their budgets for that fiscal year.

(b) Property owned by the Town of Calabash on June 30, 1989, and the amount of fund balance of the Town of Calabash at the end of the 1988-89 fiscal year are excluded from the plan adopted under subsection (a) of this section.

(c) The plan is effective only if the Town of Carolina Shores is incorporated pursuant to Sections 2 through 7 of this act.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 860

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

H860-ALB-2 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Second Edition

1 moves to amend the bill on page 1, line 20, and page 4, line 34,
2 by adding the following at the end of the line:
3 "Notwithstanding G.S. 163-33(8), notice of the election shall be
4 given at least 14 days prior to the last date to register for the
5 election under G.S. 163-82.6(c)(2)."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, July 28, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

421

H.B.(CS)860 Calabash/Carolina Shores.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 860 July 28

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JULY 29, 1998

12:00 NOON - ROOM 544 LOB

Opening of Meeting - Senator Hoyle, Presiding

Introduction of Pages

BILL TO BE CONSIDERED:

SB 1336 1998 Gov. DWI Amendments - Senator Odom
HB 1356 - Electronic Commerce - Rep. Reynolds
SB 1571 - Regulate Ticket Broker's Fee - Senator Hoyle

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 29, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, July 29, 1998 at 12:00 Noon in Room 544 LOB. There were 23 members of the committee present. Senator David Hoyle, Co-chairman, called the meeting to order and introduced the Pages, they were: Carolina Bailey from Kinston, North Carolina, sponsored by Senator Ed Warren, Dan Reeves from Raleigh, North Carolina, sponsored by Senator Eric Reeves and Joe Marocheck from Raleigh, North Carolina, sponsored by Senator Robert Carpenter.

S. B. 1336 - 1998 Gov. DWI Amendments

Senator Fountain Odom came to explain the bill. Senator Kerr moved for adoption of a proposed committee substitute for the purpose of discussion, motion passed. After a length discussion and questions from members of the committee, Senator Cooper sent forward amendment #1 to this bill and moved for adoption, motion passed. Senator Kerr sent forward amendment #2 to this bill and moved for adoption, motion passed. Senator Rand send forward amendment #3 to this bill and moved for adoption. After a period of discussion, questions and answers from Staff Counsel on this amendment, Senator Rand withdrew amendment #3. (Copy of Bill, Explanation from Walker Reagan and Jo B. McCants from Research, Proposed Committee Substitute Bill, Fiscal Note, Amendments #1,2 and 3 are included in Minutes)

H. B. 1356 - Electronic Commerce was not heard at this Meeting.
S. B. 1571 - Regulate Ticket Broker's Fee was not heard at this Meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitors Sign In Sheet is Attachment #1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1336*
Judiciary Committee Substitute Adopted 7/21/98

Short Title: 1998 Gov. DWI Amendments. (Public)

Sponsors:

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or~~ 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair market value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent ~~Party~~ owner. -- A motor vehicle ~~owner who:~~ owner:

a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor vehicle owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

~~(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.~~

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued.~~ issued at the time of seizure.

~~(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense ~~of impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle was seized to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for

any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- ~~The trial judge~~ Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.~~ underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the ~~sentencing hearing, or at a subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was the only motor vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was not the only vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent ~~party~~ owner as defined ~~by subdivision (a1)(2) of~~ in this section, in which case the trial judge shall order the motor vehicle released to the innocent ~~party vehicle~~ owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge ~~shall either:~~ shall:

(1) a. Authorize the ~~school board to sell~~ sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

~~(2)~~ b. ~~Release~~ Order the motor vehicle released to an intervening lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this ~~section.~~ section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that~~ the petitioner is an ~~"innocent party"~~; 'innocent owner', as defined by this section, a judge shall order the motor vehicle ~~returned~~ released to ~~the~~ that ~~owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and

~~(3) The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent ~~vehicle~~ owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and

storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest ~~is equal to or greater than the fair market value of the vehicle;~~ has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the ~~lienholder; and~~ lienholder;

(4) ~~The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.~~ The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~"

Section 3. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.**

(a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person ~~in violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the Division as soon as practical but no later than 72 hours after seizure of the motor vehicle and the agency designated under subsection (b1) of this section of the seizure in accordance with procedures established by the ~~Division.~~ Division and the agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an agency designated by the Governor shall issue written notification of impoundment to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear

from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of Chapter 20 of the General Statutes may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. ~~to a location designated by the county school board for the county in which the operator of the vehicle is charged and~~ Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the constructive possession of the ~~school board~~ county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school board~~ board of education may elect to have seized motor vehicles stored on property owned or leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for ~~storage.~~ storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county ~~school board~~ board of education may contract with a commercial towing and storage facility or other private entity for the ~~storage~~ towing, storage, and disposal of

seized motor vehicles, and a storage fee of not more than ~~five~~ ten dollars ~~($5.00)~~ ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, ~~or a lienholder of a vehicle,~~ other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a ~~qualified~~ nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;

~~(2) All towing and storage charges have been paid;~~

(3) ~~Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3,~~ A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of ~~trial of the operator;~~ any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) ~~If a qualified vehicle owner, execution~~ Execution of an acknowledgment as described in G.S. 20-28.2(a1); ~~and~~

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized ~~vehicle.~~ motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney

under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon as thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the

identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) Default on the obligation secured by the motor vehicle has occurred;

(2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

(3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was seized all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

(4) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or the motor vehicle owner; and

(5) The forfeited motor vehicle had not previously been released to the lienholder.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

(1) The defendant;
(2) The motor vehicle owner who owned the motor vehicle immediately prior to forfeiture; or
(3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle was seized. If the motor vehicle is declared a total loss by the insurance company responsible for repairs to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in the Chapter, nothing in this section shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education

may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders and the proceeds of the sale shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. The order of payment of costs under this subsection, in addition to being a part of the criminal judgment, shall also constitute a civil judgment in favor of the party to whom the restitution is owed, shall be docketed by the clerk of court as any other civil judgment, and may be collected as any other civil judgment.

(m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a 'compelling reason' for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal his conviction to superior court, the appeal shall be set down for trial on the next available trial date and the limitations on continuances and requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall apply."

Section 4. G.S. 20-28.4 reads as rewritten:

"**§ 20-28.4. Release of impounded motor vehicles by judge.**

~~(a) Release to Innocent Vehicle Owner. — A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(c).~~

~~(b) Acknowledgment Required. — The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

~~(c) Release to Lienholder. — A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~ an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at ~~the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),~~ a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the driver's license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder to pursuant G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be ~~returned~~ released to the motor vehicle ~~owner.~~ owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund.~~"

Section 5. G.S. 20-28.5 reads as rewritten:

"**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

(a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale conducted in accordance with the provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of the General ~~Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county ~~school board~~ board of education or a person acting on its behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale~~ Notice of sale, including the date, time, location, and manner of sale, shall ~~also~~ be given by ~~certified mail, return receipt requested,~~ first-class mail, to all motor vehicle owners at the address shown by the ~~Division's~~ records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written notice of sale shall also be ~~by certified mail, return receipt requested,~~ given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage ~~liens and the cost of sale.~~ costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded ~~with the Division~~ prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the

forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- The county board of education may, at its option, retain any forfeited motor vehicle for its ~~use.~~ use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by the county board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgement as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"**§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.**

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released, and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or

the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"**§ 20-55. Examination of registration records and index of seized, stolen and recovered vehicles.**

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of seized, stolen and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. - The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"**§ 1-339.4. Who may hold sale.**

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; or
(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
(7) In a receivership proceeding, the receiver;
(8) In a proceeding to sell property of a trust, the trustee;
~~(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf.~~"

Section 14. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one

or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify lienor.~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date they receive the notice if a judicial hearing is requested. Failure of the recipient to notify the Division

or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following words when used in this Article shall have the following meanings:

(1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.

(4) 'Commissioner' shall mean the Commissioner of Insurance.

(5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) 'Obligor' shall mean a principal or a surety on a bail bond.

(7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond.~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or

approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:
a. The test reveals an alcohol concentration of 0.08 or more; or
b. The person was driving a commercial motor vehicle and the test reveals ~~an~~ any alcohol ~~concentration of 0.04 or more.~~ concentration.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 19. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
(2) The person is charged with that offense as provided in G.S. 20-16.2(a);
(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
(4) The person:
a. Willfully refuses to submit to the chemical analysis;
b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; or
c. Has ~~an~~ any alcohol concentration ~~of 0.04 or more~~ at any relevant time after the driving of a commercial vehicle."

Section 20. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
(2) ~~He~~ The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; or

b. ~~An~~ Any alcohol concentration ~~of 0.04 or more~~ at any relevant time after driving a commercial motor vehicle; and

(3) ~~He~~ The person is charged with an implied-consent offense."

Section 21. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

Section 22. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.
(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
(3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.
(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.
(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a second conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2 or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 23. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2 or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 24. G.S. 20-138.2(a) reads as rewritten:

"(a) Offense. -- A person commits the offense of impaired driving in a commercial motor vehicle if ~~he~~ the person drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the driving, ~~an~~ any alcohol ~~concentration of 0.04 or more.~~ concentration."

Section 24.1. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged. --~~ Punishment.-- The offense in this section is a Class 1 misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, ~~but~~ and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 24.2. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense ~~he~~ the person held either a valid ~~driver's~~ drivers license or a license that had been expired for less than one year;

b. At the time of the offense ~~he~~ the person had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense ~~he~~ the person has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina ~~driver's~~ drivers license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if ~~he~~ the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(1a) A person convicted of a first offense of impaired driving in a commercial vehicle under G.S. 20-138.2 is eligible for a limited commercial driving privilege if:

a. At the time of the offense the person held either a valid commercial drivers license or a commercial drivers license that had been expired for less than one year;

b. At the time of the offense the person had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving in a commercial vehicle;

d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina commercial drivers license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.2 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 25. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by

law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 26. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if any of the following occur:

a. The test reveals an alcohol concentration of 0.08 or ~~more; or~~ more.

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

c. The person was driving a school bus, a school activity bus, or a child care vehicle while transporting children and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 27. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
(2) The person is charged with that offense as provided in G.S. 20-16.2(a);
(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
(4) The person:
a. Willfully refuses to submit to the chemical analysis;
b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~
c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~vehicle; or
d. Has any alcohol concentration at any relevant time after transporting children in a school bus, a school activity bus, or a child care vehicle."

Section 28. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:
(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
(2) ~~He~~ The person has:
a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~
b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor ~~vehicle; and~~ vehicle; or
c. Any alcohol concentration at any relevant time after transporting children in a school bus, a school activity bus, or a child care vehicle; and
(3) ~~He~~ The person is charged with an implied-consent offense."

Section 29. G.S. 20-138.1(a) reads as rewritten:

"(a) Offense. -- A person commits the offense of impaired driving if ~~he~~ the person drives any vehicle upon any highway, any street, or any public vehicular area within this State:
(1) While under the influence of an impairing substance; ~~or~~
(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the driving, an alcohol concentration of 0.08 or ~~more.~~ more; or

(3) At any relevant time after the driving of a school bus, a school activity bus, or a child care vehicle transporting any children, any alcohol concentration."

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 30. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 31. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~ vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 32. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) ~~He~~ The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and~~ or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) ~~He~~ The person is charged with an implied-consent offense."

PART V. MISCELLANEOUS PROVISIONS.

Section 35. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a part-time person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

PART VI. EFFECTIVE DATE.

Section 36. Parts I and V of this act become effective October 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, and IV of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of the act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S1336-CSSE-002
PROPOSED FINANCE COMMITTEE SUBSTITUTE
SENATE BILL 1336
Judiciary Committee Substitute Adopted 7/21/98

THIS IS A DRAFT 29-JUL-98 18:31:27
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1998 Gov. DWI Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as written:

"(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or

blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or~~ 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair market value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent ~~Party~~ owner. -- A motor vehicle ~~owner who:~~ owner:

a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute

the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor vehicle owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

~~(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.~~

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued.~~ issued at the time of seizure.

~~(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense ~~of impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for

insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle was seized to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- ~~The trial judge~~ Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.~~ underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the ~~sentencing hearing, or at a subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (c) of this section exist and the defendant was the only motor vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the

evidence, that such motor vehicle owner is an innocent ~~party~~ owner as defined ~~by subdivision (a1)(2) of~~ in this section, in which case the trial judge shall order the motor vehicle released to the innocent ~~party vehicle~~ owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge ~~shall either:~~ shall:

(1) a. Authorize the ~~school board to sell~~ sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

~~(2)~~ b. ~~Release~~ Order the motor vehicle released to an intervening lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this ~~section.~~ section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that~~ the petitioner is an ~~"innocent party",~~ 'innocent owner', as defined by this section, a judge shall order the motor vehicle ~~returned~~ released to ~~the~~ that ~~owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and

~~(3) The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent ~~vehicle~~ owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest ~~is equal to or greater than the fair market value of the vehicle;~~ has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited

motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the ~~lienholder; and~~ lienholder;

(4) ~~The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.~~ The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~"

Section 3. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.**

(a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person ~~in violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with an offense involving impaired driving is subject to seizure if at

the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the Division as soon as practical but no later than 72 hours after seizure of the motor vehicle and the agency designated under subsection (b1) of this section of the seizure in accordance with procedures established by the ~~Division.~~ Division and the agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an agency designated by the Governor shall issue written notification of impoundment to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the

motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. ~~to~~

~~a location designated by the county school board for the county in which the operator of the vehicle is charged and~~ Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the constructive possession of the ~~school board~~ county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school board~~ board of education may elect to have seized motor vehicles stored on property owned or leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for ~~storage.~~ storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county ~~school board~~ board of education may contract with a commercial towing and storage facility or other private entity for the ~~storage~~ towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ~~five~~ ten dollars ~~($5.00)~~ ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, ~~or a lienholder of a vehicle,~~ other than the driver at the time of the underlying offense resulting in the seizure, may

apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a ~~qualified~~ nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;

~~(2) All towing and storage charges have been paid;~~

(3) ~~Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3,~~ A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of ~~trial of the operator;~~ any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) ~~If a qualified vehicle owner, execution~~ Execution of an acknowledgment as described in G.S. 20-28.2(a1); ~~and~~

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized ~~vehicle.~~ motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S.

20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in

which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon as thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) Default on the obligation secured by the motor vehicle has occurred;
(2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;
(3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was seized all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;
(4) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or the motor vehicle owner; and
(5) The forfeited motor vehicle had not previously been released to the lienholder.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

(1) The defendant;
(2) The motor vehicle owner who owned the motor vehicle immediately prior to forfeiture; or
(3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle was seized. If the motor vehicle is declared a total loss by the insurance company responsible for repairs to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in the Chapter, nothing in this section shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection

shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders and the proceeds of the sale shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of

superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due, shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a 'compelling reason' for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal his conviction to superior court, the appeal shall be set down for trial on the next available trial date and the limitations on continuances and requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall apply."

Section 4. G.S. 20-28.4 reads as rewritten:

"**§ 20-28.4. Release of impounded motor vehicles by judge.**

~~(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).~~

~~(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

~~(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~ an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at ~~the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),~~ a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the driver's license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder to pursuant G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be ~~returned~~ released to the motor vehicle ~~owner.~~ owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund.~~"

Section 5. G.S. 20-28.5 reads as rewritten:

"**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

(a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale

conducted in accordance with the provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of the General ~~Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county ~~school board~~ board of education or a person acting on its behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale~~ Notice of sale, including the date, time, location, and manner of sale, shall ~~also~~ be given by ~~certified mail, return receipt requested,~~ first-class mail, to all motor vehicle owners at the address shown by the ~~Division's~~ records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written notice of sale shall also be ~~by certified mail, return receipt requested,~~ given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage ~~liens and the cost of sale.~~ costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded ~~with the Division~~ prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant

to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- The county board of education may, at its option, retain any forfeited motor vehicle for its ~~use.~~ use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by the county board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgement as defined in G.S. 20-28.2(a1)(1), the entry

of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee

from a person to whom a seized vehicle is released at the time the motor vehicle is released, and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is

revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"**§ 20-55. Examination of registration records and index of seized, stolen and recovered vehicles.**

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of seized, stolen and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a

mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. - The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident

(2) The conditions existing at the time of the accident.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"**§ 1-339.4. Who may hold sale.**

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; or

(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;

(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;

(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;

(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;

(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;

(7) In a receivership proceeding, the receiver;

(8) In a proceeding to sell property of a trust, the ~~trustee;~~ trustee.

~~(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf.~~"

Section 14. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business

pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if

the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify lienor.~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date they receive the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special

proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following words when used in this Article shall have the following meanings:

(1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.

(4) 'Commissioner' shall mean the Commissioner of Insurance.

(5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally

to transact surety business and specifically to transact bail bond business in this State.

(6) 'Obligor' shall mean a principal or a surety on a bail bond.

(7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond.~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and

all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B.

Section 19. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(a1) 10-Day Disqualification. -- A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines,

including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 20. G.S. 20-17.6(a) reads as rewritten:

"(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked under G.S. 20-17(2)~~ DWI.

(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00

and less than 0.04, if the person's drivers license was revoked under 20-17(a)(13).

(5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with a alcohol concentration of greater than 0.00, if the person's drivers license was revoked under 20-17(a)(14)."

Section 21. G.S. 20-19 is amended to add a new subsection (c2) to read:

"(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d) the period of revocation shall be one year.

Section 22. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 23. Article 3 of Chapter 20, is amended by adding a new section to read as follows:

"**§ 138.2A Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01 (3d)(a) and (3d)(b), upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.

(b) Implied Consent Offense. -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of $100. A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under 20-138.2.

(d) Second or subsequent conviction defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and 20-17.4(a)(6).

Section 24. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged. --~~ Punishment.-- The offense in this section is a ~~Class 1~~ misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, ~~but~~ and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 25. G.S. 20-179(a) reads as rewritten:

(a) Sentencing Hearing Required. -- After a conviction for impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1, 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of

the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 26. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from

school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 27. Article 3 of Chapter 20, is amended by adding a new section to read as follows:

"**§ 138.2B Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle motor vehicle after consuming alcohol if the person drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.

(b) Implied Consent Offense. -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of $100. A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included

offense of impaired driving of a commercial vehicle under 20-138.1.

(d) Second or subsequent conviction defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2).

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 28. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 29. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~ vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 30. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) ~~He~~ The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and~~ or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) ~~He~~ The person is charged with an implied-consent offense."

PART V. MISCELLANEOUS PROVISIONS.

Section 31. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a part-time person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

Section 32. The Joint Legislative Education Oversight Committee shall study the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 28.9 and the financial impact on county boards of education. The study shall include, among other relevant information, a statistical analysis of the number of vehicles seized, the length of time vehicles are held until disposition by the court, the percentage of seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage costs, and county school administrative costs associated with the seizure and forfeiture of the vehicles. The Committee shall recommend ways to make the procedure and process for managing seized and forfeited vehicles more efficient and effective. The Committee may report to the 1999 Session of the 1999 General Assembly and the 2000 Session of the 1999 General Assembly.

PART VI. EFFECTIVE DATE.

Section 33. Parts I and V of this act become effective October 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, and IV of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of the act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 29, 1998

MEMORANDUM

TO: Senate Finance Committee

FROM: O. Walker Reagan, Committee Co-Counsel, Senate Judiciary Committee

RE: **SENATE BILL 1336 - 1998 GOVERNOR'S DWI AMENDMENTS - Senator Odom**

Senate Bill 1336 is a recommendation of the Joint Corrections and Crime Control Oversight Committee and the Governor's DWI Task Force. The bill would implement 5 recommendations of these two groups:

- Revise the DWI forfeiture laws and other related laws.
- Provide for expedited hearings of DWI's involving seized vehicles.
- Provide for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers.
- Provide for the immediate 30-day revocation for drivers licenses of persons under 21 violating zero tolerance.
- Increase the penalty for 19 and 20 year old possessing or purchasing alcoholic beverages.

PART I - DWI FORFEITURE AMENDMENTS

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law to make changes and improvements in the law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.
7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was reported stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract to drive.

Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside within 60 days.

Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.

Subsection (d) is amended to allow the court to order forfeited collected insurance proceeds and the rights to claim unpaid insurance proceeds.

Subsection (e) provides for the vehicle to be returned to an innocent owner, including a lessor, upon payment of towing and storage charges.

Subsection (f) provides for the vehicle to be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle, to be sold in accordance with the repossession law, with any equity arising from the sale to be paid to the county board of education.

Section 3 (20-28.3) Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to a state agency designated by the Governor.

Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.

Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from $5 per day to $10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless other arrangements are agreed to by the towing company.

Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.

Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which

time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.

Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.

Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance with the repossession law and any equity arising from the sale is to be paid to the county board of education.

Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.

Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth $1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.

Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.

Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.

Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5). Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.

Subsection (c) clarifies how much the county school board should pay other school boards in the county if the county school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.8 and 20-28.9) clarify what information the clerk of court is required to report to DMV and authorizes the Department of Public Instruction to administer regional or statewide contracts for the towing, storage, and sale of seized and forfeited vehicles. It also clarifies that storage fees up to $10 per day may be charged for storage under a statewide or regional contract and that a $10 per vehicle administrative fee will be collect to defray the costs for DPI to administer this program.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 12.1 requires DMV to modify the accident report form to provide for the investigative officer to indicate on the accident report if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale

Section 15 (44A-4(b)(1) amends the mechanics lien statute to permit another alternative for notice to be sent to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under this provision in addition to DMV sending the notice, the lienholder may send the notice directly.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke for life a commercial drivers license for a second or subsequent commercial DWI.

PART III - ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

PART V - MISCELLANEOUS PROVISIONS

Section 35 authorizes the Department of Public Instruction to hire a part-time person to administer the statewide or regional towing and storage contract for seized vehicles.

PART VI - EFFECTIVE DATE

The provisions in the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increase options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. The Parts for zero tolerance violations, immediate revocation for under 21 zero tolerance violation, and increasing the penalty for 19 and 20 year old alcoholic beverages purchase or possession are effective December 1, 1998.

S1336-SMRU-003

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

July 29, 1998

MEMORANDUM

TO: **Senate Finance Committee**
FROM: **Jo B. McCants**
RE: **Senate Bill 1336 - Changes to the Zero Tolerance Provisions**

The proposed committee substitute to Senate Bill 1336 creates a new offense for commercial motor vehicle drivers who drive a commercial motor vehicle with an alcohol concentration of more than 0.00 but less than 0.04 (20-138.2A). The changes also seek to restore the current law for 0.04 violators under 20-138.2. However, the punishment has been changed so that 0.04 violators are sentenced in the same manner as a defendant convicted of DWI under 20-138.1. (This change with regard to punishment was made in the committee substitute that received a favorable report in the Senate Judiciary Committee.)

New Provision (20-138.2A) Operating a commercial vehicle after consuming alcohol.

1. **Offense**. -- Person drives a commercial vehicle with an alcohol concentration greater than 0.00 and less than 0.04. The offense is an implied consent offense.

2. **Punishment**-- a. **First Offense**: Infraction, a mandatory $100 penalty, and a 10-day post conviction disqualification.

b. **Second or Subsequent Offense**: Misdemeanor and defendant sentenced under 20-179, just as a defendant charged under 20-138.1 or 20-138.2. Disqualification for 1 year. Any subsequent convictions will follow the same disqualification track; i.e., modified life, life without consideration, as would a defendant charged under 20-138.2. Conforming changes made to applicable statutes amended so that courts and DMV may administer proper sanctions. (Ex. 20-17(a) instructs DMV to revoke license on second or subsequent offense; 20-17.6 allows DMV to restore license upon completion of substance abuse treatment ordered by the court.)

c. **Lesser Included Offense**: The new offense under 20-138.2A is a lesser included offense of 20-138.2.

The limited driving privilege language has been removed, so that the law complies with federal regulations.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1336 (Proposed Committee Substitute S1336-PCS3641-RU004)

SHORT TITLE: 1998 Governor's DWI Amendments

SPONSOR(S): Senators Odom, Forrester, Blust, Jenkins, McDaniel and Phillips.

FISCAL IMPACT

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

There are several areas where this bill has a fiscal impact but dollar estimates are not available for all aspects. The dollar total below therefore understates the total dollar cost, particularly for AOC, due to the lack of data to project accurate costs in some areas.

(Note: R=recurring; NR=nonrecurring)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
GENERAL FUND REVENUES					
DPI - R	$45,000	$60,000	$60,000	$60,000	$60,000
EXPENDITURES					
DPI - R	$28,900	$39,883	$41,239	$42,558	$43,963
DPI - NR	$4,138				
Judicial - R	$40,408	$71,305	$73,730	$76,089	$78,600
Judicial - NR	$1,020				
Indigent Defense	$17,710	$30,360	$30,360	$30,360	$30,360
Total	$92,176	$141,548	$145,329	$149,007	$152,923
NET IMPACT (expenditures minus revenue)	$47,176	$ 81,548	$85,329	$89,007	$92,923
POSITIONS	2	2	2	2	2
HIGHWAY FUND REVENUE					
DMV - R	($18,390)	($24,520)	($24,520)	($24,520)	($24,520)
EXPENDITURES					
DMV - R	$6,107	$9,042	$9,946	$10,828	$11,766
DMV - NR	$4,294				

Designated Agency R (note 1)	**$23,075**	**$31,796**	**$32,833**	**$33,851**	**$34,929**
Designated Agency-NR	**$24,294**	**$68,400**			
Total	**$57,770**	**$109,238**	**$42,779**	**$44,679**	**$46,695**
NET IMPACT (expenditures minus revenue)	**$76,160**	**$133,758**	**$67,299**	**$69,199**	**$71,215**
POSITIONS:	**2**	**2**	**2**	**2**	**2**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Judicial System, Division of Motor Vehicles, State Highway Patrol, Department of Public Instruction, Local Law Enforcement Agencies, and Local School Boards

EFFECTIVE DATE: The provisions in Part I of the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increased options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. Parts II, III, & IV for zero tolerance violations and immediate revocation for under 21 zero tolerance violations are effective December 1, 1998.

Note 1: The bill requires the Governor to designate an agency to send seizure notifications. The estimate is the higher of the two estimates for the Division of Motor Vehicles and the State Highway Patrol as the designated agency. The estimates for each are in the body of the note.

BILL SUMMARY:

Senate Bill 1336 would implement recommendations of the Joint Legislative Corrections and Crime Control Oversight Committee and the Governor's DWI Task Force. In general, the bill would (1) revise the DWI forfeiture laws and other related laws; (2) provide for expedited hearings of DWI's involving seized vehicles; (3) provide for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers; and (4) provide for the immediate 30-day revocation of drivers licenses of persons under 21 violating zero tolerance. A more detailed summary of each part of the bill is included later in the fiscal note.

ASSUMPTIONS AND METHODOLOGY: Generally

This bill has four major parts. Each part has the potential to impact the following: the Judicial System (Magistrates, Clerks of Court, Trial Judges, Appellate Judges, Indigent Defense Attorneys, District Attorneys), the Division of Motor Vehicles, the State Highway Patrol, local law enforcement agencies, the Department of Public Instruction, and local school boards. This fiscal note includes an analysis for each part of the bill. Included in the analysis for each part of the bill are the detailed bill summary and the assumptions & methodology for each agency impacted by that part.

In most cases, the estimated impact on each agency depends on the projected number of seized vehicles. The Department of Public Instruction reports that 2,337 vehicles were seized from December 1, 1997 through April 30, 1998, the first five months that the 1997 DWI Forfeiture Laws were in effect. Based on this activity, an average of 467 vehicles are seized monthly for a projected total of 5,604 by the end of the first year. **This analysis assumes that approximately 6,000 vehicles will be seized each year.**

A 2.7% inflation rate for operating cost is applied to future years. Also, inflation rates averaging 3.37% were applied to future years for salaries.

SUMMARY OF EACH PART AND METHODOLOGY OF COST ESTIMATE
(summary prepared by Judiciary Committee Counsel, Research Division)

PART I - DWI FORFEITURE AMENDMENTS
Bill Summary

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.
7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

- Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was reported stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract as a driver.
- Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing held 60 days after the defendant fails

to appear on the DWI charge and the order of arrest for failing to appear has not been set aside.

- Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.
- Subsection (d) is amended to allow the court to order collected insurance proceeds to be paid to the county board of education and the rights to claim unpaid insurance proceeds assigned to the county board of education.
- Subsection (e) provides for the vehicle to be returned to an innocent owner, including a lessor, upon payment of towing and storage charges.
- Subsection (f) provides for the vehicle to be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle, to be sold in accordance with the repossession law, with any equity arising from the sale to be paid to the county board of education.

Section 3 (20-28.3)

- Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to a state agency designated by the Governor.
- Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.
- Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from $5 per day to $10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless other arrangements are agreed to by the towing company.
- Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.
- Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.
- Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.
- Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance

with the repossession law and any equity arising from the sale is to be paid to the county board of education.

- Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.
- Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth $1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.
- Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.
- Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.
- Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5).

- Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.
- Subsection (c) clarifies how much the county school board should pay other school boards in the county if the county school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.8 and 20-28.9) clarify what information the clerk of court is required to report to DMV and authorizes the Department of Public Instruction to administer regional or statewide contracts for the towing, storage, and sale of seized and forfeited vehicles. It also clarifies that storage fees up to $10 per day may be charged for storage under a statewide or regional contract and that a $10 per vehicle administrative fee will be collected to defray the Department of Public Instruction's costs for administering this program.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 12.1 requires DMV to modify the accident report form to provide for the investigative officer to indicate on the accident report if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale.

Section 15 (44A-4(b)(1) amends the mechanics lien statute to permit the lienholder to send the notice directly to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under existing law, DMV sends the notices.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

Assumptions & Methodology - Judicial System:

Several sections amend the existing law by increasing the options for pre-trial release of seized vehicles and streamlining the DWI forfeiture process. With these changes, many of the administrative tasks in the process will be placed on the clerks of superior court.

The workload for the clerks of court is expected to increase due to (1) broadening the offenses for which vehicles are subject to seizure (Sec. 3); (2) clarification of the process for pre-trial release to innocent parties (Sec. 3); (3) the addition of a mechanism for restitution payments to school boards (Sec. 3); (4) broadening of the definition of innocent parties (Sec. 2); (5) the increase in options for release of impounded vehicles (Sec. 4); and (5) the disbursement of insurance proceeds (Sec. 2).

There is no data available to project the number of new petitions, inquiries and hearings that will result from these changes nor the extent to which the workload will be distributed evenly around the state. If the 6,000 seized vehicles are distributed evenly throughout the year and among the 100 counties, there would be 1 seizure in each county each week. This impact could probably be absorbed within existing resources. However, it is more likely the seizures will be predominantly in certain urban areas and show some seasonality. Under this scenario, some counties would not be able to absorb the additional work.

Section 8 adds new provisions for the clerk of superior court to report to the Division of Motor Vehicles all information required by the Division concerning the disposition of seized and forfeited motor vehicles. These provisions may create additional responsibilities for the clerks, since this information is not provided under current law. There also would be some impact on the court system because programming changes would be required to facilitate the exchange of such information between the clerks and the Division.

FISCAL IMPACT: There is a fiscal impact on the Judicial System but the estimated dollar impact cannot be estimated, reliably.

Assumptions & Methodology - Agency Designated by the Governor:

Under existing law, an officer who seizes a vehicle pursuant to the DWI Forfeiture Laws must send written notification to any vehicle owner who was not operating or present in the vehicle at the time of the seizure. The officer must also notify the Division of Motor Vehicles of the seizure. Sections 3(b) and (b1) of this bill would eliminate the officer's duty to notify the vehicle owner. Rather, the bill would require the officer to notify the Division and an agency designated by the Governor, as soon as practical but within 72 hours, that a motor vehicle has been seized. That agency must issue written notification of the seizure to any lienholder of record and to the motor vehicle owner who was not operating the vehicle or was not present at the time of the offense within 48 hours of receipt of notification from the charging officer. If the vehicle was damaged during the commission of the underlying offense or incident to seizure, that agency must also notify the insurance company of record.

The Governor has not yet designated the agency but the most likely choices are the Division of Motor Vehicles (Division) or the State Highway Patrol (Patrol). The work involved in this task should be very similar in either agency and will require one time modifications to either computer system and new ongoing clerical personnel. There are some important differences in the approach of each agency that could affect the costs.

Assuming DMV is the Designated Agency:

To implement this bill, the Division's current State Titling and Registration System (STARS)/DWI Subsystem must be revised to print notifications of DWI seizures for the owners and lienholders. Revisions to existing programs and the development of new programs would be required to provide for the automated generation of the seizure notifications. The Division estimates that 1,000 hours would be needed to complete the analysis, design, programming, testing, and implementation activity required to modify the subsystem. The total one-time cost is estimated to be $88,400 over a two year period.

The Division estimates that 7 additional employees would be needed to process the notifications. Their estimate includes $172,949 for salaries and benefits for 7 new employees. It also includes $68,641 for furniture, equipment, telephone system, and office space for 7 new employees; postage; and data processing fees.

The Division's estimate is based on the number of employees currently processing lienor notices of intent to sell (3 employees), the time it takes to process the notices (1 hour per notice file), their estimate that 10,000 vehicles will be seized annually, and their

estimate that 9,700 vehicles will be subject to sell by lienors. Thus, the Division calculates the need for 7 additional employees as follows: 19,700 notices (10,000 seizure notices + 9,700 lienor notices) divided by 2,000 work hours per year/employee equals 9.85 employees less 3 current employees equals 7 additional employees needed.

The Fiscal Research Division estimates that only one additional Processing Assistant IV would be needed to process seizure notifications. This assumes an efficient automated system which would require minimal data entry. However, an additional year of experience may indicate the need for more clerical support. The personnel cost for the Processing Assistant IV effective October 1, 1998 is estimated to be $18,530 with an annualized cost of $24,707. The reasons for the difference in the two estimates are as follows. As noted above in the first paragraph under Assumptions and Methodology on page 2, the Fiscal Research Division estimates that 6,000 rather than 10,000 vehicles will be seized annually. Less time should be required to process seizure notices than is required for lienor notices because processing seizure notices would be a more automated process than processing lienor notices. Also, the requirements for a seizure notice are substantially less than the requirements for lienor notices. For example:

- seizure notices are to be sent via first class mail whereas lienor notices must be sent by registered or certified mail, return receipt requested.
- Seizure notices are to be sent to the owner of record if he/she was not operating the vehicle or was not present at the time of seizure, any lienholder of record and to the insurance company of record if the vehicle was damaged. Lienor notices must go the person having legal title, any person with whom the lienor dealt, and any secured party who is actually known to the Division or who can be reasonably ascertained.
- The lienor notice must include more information which is more specific to the intent to sell than is required in the seizure notices.
- Lien notices involve processing of a fee from the lienor.
- A form to be returned by the recipient must be included in each lienor notice and the Division must provide the appropriate follow-up action for any form which is returned.

In addition to the personnel cost, the Fiscal Research Division estimates that $10,354 would be needed for furniture, equipment, a telephone and line, and postage. This estimate, differs from the Division's estimate, does not include the lease of office space or the installation of a new telephone system and has also been adjusted based on one additional person instead of seven.

FISCAL IMPACT: HIGHWAY FUND	
1 Processing Assistant IV	$18,530 R (effective 10/1/98) R
Annualized	$24,707 R

Operating Cost	$ 4,545 R (effective 10/1/98)
Operating Cost	$ 4,294 NR
MIS Cost	$88,400 NR
TOTAL	$115,769 (R & NR effective 10/1/98)

Assuming the State Highway Patrol is the Designated Agency:

As with the Division, implementation of this bill would require modifications to the Patrol's existing computer system. The Patrol currently sends notifications to registered owners of vehicles impounded by them. However, to send seizure notifications as required by this bill, the Patrol estimates the need for 7 additional technical positions (1 Systems Programmer I, 1 Telecommunications Technician III, 1 Applications Analyst Programmer II, and 4 Application Programmer I's) to create a new applications database and a wide area network capable of interfacing with local level entities. In addition to the technical positions, the Patrol estimates that it will need 4 clerical positions (1 Program Assistant V, 2 Processing Assistants IVs, and 1 Office Assistant IV) for support, data entry, error resolution, general office duties, filing, and mailings. Without the wide area network, the Patrol estimates the need for 8 clerical positions rather than 11 clerical and technical positions. The Patrol's estimate of the number of clerical positions needed is based on the assumption that they will verify data contained in Division's database rather than send the notifications to the most recent address contained in the Division's records.

The Patrol's total estimate for sending the seizure notifications with the establishment of the wide area network is $730,942. The estimate includes personnel cost of $454,788 for the 7 technical positions and $145,282 for the 4 clerical positions. The estimate also includes $124,565 in one-time cost for a modular office facility and work areas, printers, computers, and other data processing equipment and recurring cost of $5,790 for postage. The Fiscal Research Division believes the Patrol's plan, although comprehensive and technologically advance, goes beyond the requirements of the bill.

The wide area network capable of interfacing with local level entities included in the Patrol's estimate is not necessary for the implementation of this bill. Also, the Patrol plans to verify the data contained in the Division's records with other available information in the Department of Revenue, the Judicial System, etc. This verification process is beyond the current requirements of this bill which only requires the agency to send notifications to the lienholder and the registered owner at the most recent address in the Division's system. Further, regardless of which agency is designated by the Governor, the Division has the responsibility for notifying insurance companies when the seized vehicle is damaged.

Currently, the Patrol has a system in place for sending notifications to owners of vehicles seized by the Patrol. The Patrol accesses the Division's database to retrieve the names and addresses of the registered owners. The data is then manually keyed into their

database and the letters are automatically generated. The MIS Division of the Department of Transportation estimates that it can perform the programming necessary to modify the Patrol's existing database to allow online access to and transfer of all the Division data required to give notice, thereby eliminating the need to manually key data into the Patrol's system. The estimated cost for the programming is $61,520.

Based on these factors, the Fiscal Research Division estimates that with the modification of the system to allow the transfer of information, only one Processing Assistant IV would be needed to process the seizure notifications. The personnel cost for a Processing Assistant IV effective October 1, 1998 is estimated to be $18,530 with annualized cost of $24,707. This assumes an efficient automated system which would require minimal data entry. However, an additional year of experience may indicate the need for more clerical support. In addition to the personnel cost, the Fiscal Research Division estimates that $10,817 would be needed for furniture, equipment, and postage.

FISCAL IMPACT: HIGHWAY FUND	
State Highway Patrol:	
1 Processing Assistant IV	$18,530 R (effective 10/1/98) R
Annualized	$24,707 R
Operating Cost	$ 5,760 R (effective 10/1/98)
Operating Cost	$ 5,057 NR
Division of Motor Vehicles:	
MIS Cost	$61,520 NR
TOTAL	$89,427 R & NR (effective 10/1/98)

Assumptions & Methodology - Division of Motor Vehicles

Section 2 amends the existing law to require the Division of Motor Vehicles to determine the name of any insurance companies that are the insurers of record with the Division for the seized vehicle or that may otherwise be liable for repair to the vehicle if the vehicle was damaged. The Division must also notify the insurance company that the claim for insurance proceeds for damage to the seized vehicle shall be paid to the appropriate clerk of superior court.

Based on information provided by the Division, the Fiscal Research Division estimates that one additional Processing Assistant IV will be needed to perform this function. A substantial part of the workload will be devoted to determining the name and address of the insurance company of record or otherwise liable for the repairs because the insurance information required to send the notices may not be readily available to the Division. While the Division does require the registered owner to give the name of the insurance company when the vehicle registration is issued or renewed, the Division does

not verify the validity and accuracy of the information and it does not maintain the names and addresses of insurance companies in its database. The names and addresses are maintained by the Department of Insurance. However, because of inconsistencies in the names used for insurance companies, direct match ups with the Department of Insurance database is extremely difficult. Further, the Division does not require the owner to give notice of changes in insurance companies. For these reason, determining the name and address of insurance companies may be a time consuming process which requires a full-time position.

The personnel cost for a Processing Assistant IV effective October 1, 1998 is estimated to be $18,530 with annualized cost of $24,707. In addition to the personnel cost, the Fiscal Research Division estimates that $5,554 would be needed for furniture, equipment, a telephone and line, and postage. Although the Division has limited office space, we have not included office space in the cost. However, if the Division is the designated agency responsible for seizure notices, additional office space may be needed at an estimated cost of $21,000 recurring and $4,651 nonrecurring.

FISCAL IMPACT: HIGHWAY FUND	
1 Processing Assistant IV	$18,530 (effective 10/1/98) R
Annualized	$24,707 R
Operating Cost	$ 945 R (effective 10/1/98)
Operating Cost	$ 4,294 NR
TOTAL	$23,769 R & NR (effective 10/1/98)

Section 15 (44A-4(b)(1) amends the mechanics lien statute to allow a lienor to send notices of intent to sell a vehicle subject to sale to satisfy an unpaid mechanics lien. Currently, the Division sends the notices with respect to the mechanics liens.

During the 1996-97 fiscal year, the Division received 9,700 notices of intent to sell from lienors. The Division must send notices to each owner, lienholder and other affected parties by certified or registered mail, return receipt requested. The Division collects a $10.00 fee from the lienor for each notice sent in by the lienor to cover mailing expenses. The Division sends an average of 3 certified letters for each notice.

The Division estimates that 25% of the lienors will send notices directly. Based on this estimate and prior years' activity, the Division estimates that it would process approximately 7,275 notices each year (75% of 9,700 lienor notices). Accordingly, the mailing cost for processing the notices would decrease by $17,824 ((9,700 * 2.45/letter * 3 letters *25%) from $71,295 to $53,471. The revenue from the fees collected from the lienors would decrease by $24,250 ((9,700 * $10.00/lienor * 25%) from $97,000 to $72,750.

The Division estimates that the bill would have no impact on the personnel cost of sending the notices. Currently, three employees are responsible for processing notices. It takes approximately 1 hour to complete a notice file. Thus, each employee can process approximately 2,000 notices per year for a total of 6,000. The Division has fallen several months behind on notices. Therefore, the estimated reduction in workload due to allowing lienors to send notices directly will allow the employees to reduce the backlog of notices.

FISCAL IMPACT: HIGHWAY FUND	
Expenditure	($13,368) effective 10/1/98; ($17,824) annualized
Revenue	$18,390 effective 10/1/98; $24,520 annualized

Assumptions & Methodology - Department of Public Instruction/Local School Boards

Section 8 authorizes the Department of Public Instruction to administer a regional or statewide contract for the towing, storage and sale of seized and forfeited vehicles. It provides for the assessment of a $10 per day storage fee and a $10 per vehicle administrative fee.

The Fiscal Research Division estimates that the Department of Public Instruction would need one additional Administrative Officer III to administer the contract. The personnel cost for the position effective October 1, 1998 is estimated to be $28,900 with an annualized cost of $38,534. The estimate for furniture and equipment is $4,138. Based on the estimated number of vehicles seized annually, the Fiscal Research Division also estimates that fees collected under this section would generate $60,000 (6,000 seized vehicles * $10.00 administrative fee/vehicle) in General Fund revenue on an annual basis to defray the cost of administering the contract.

Subsection 3(d) of the bill authorizes the county boards of education, in the absence of a statewide or regional contract, to contract with a commercial towing and storage facility or other private entity and to charge up to $10 per day for storage. This subsection also authorizes county boards of education, in the absence of a statewide or regional contract to store vehicle on their property and to charge a reasonable fee up to $10.00 per day. These provisions may have a fiscal impact on the county boards of education if for example the actual cost differs from the per day charge. However, the dollar value of the impact cannot be determined on a county by county basis.

Other sections in this part of the bill provide greater protections for school boards by authorizing them to negotiate with insurance companies, directing clerks of court to

pay insurance proceeds to them if the court orders seizure; authorizing expedited sale of vehicles, giving them the right to appear at forfeiture hearings and requiring defendants to pay restitution to them. No data is available to estimate the impact which these sections of the bill would have on school boards.

FISCAL IMPACT: (Statewide or throughout counties, depending on the contract)	
Revenue:	$45,000 effective 10/1/98; $60,000 annualized
Expenditure:	$28,900 R (effective 10/1/98; $38,534 annualized)
	$4,138 NR
Also, there may be an additional impact on expenditures, but the estimate of the dollar amount is not available.	

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS

Bill Summary:

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke a commercial drivers license for modified life (possibility of reinstatement after 10 years) for a second DWI conviction or for life without the possibility for reinstatement for a third or subsequent conviction of a commercial DWI offense.

Assumptions & Methodology - Judicial System

These sections stiffen the penalty for DWI for Commercial Drivers in two ways. The bill reduces the permissible blood alcohol level for commercial driving from less than .04 to no alcohol at all. The bill also institutes a 1 year disqualification if a commercial driver has a DWI while driving a noncommercial vehicle.

The reduction in the permissible blood alcohol level for commercial driving will likely result in new cases and more strenuous defense of these cases. Based on data on blood alcohol content testing on commercial drivers, the Judicial System estimates a 17% increase in the number of cases (from 96 to 112), a 10 hour increase (from 5 to 15 hours) in court time per case for judges, deputy clerks and assistant district attorneys, and a 5 hour increase (from 5 to 10 hours) in preparation time per case for assistant district attorneys. The workload for clerks and judges would each increase by 1,200 hours in court time ((96 cases currently * 10 hour increase/case) + 16 new cases * 15 hours/case)). The workload for district attorneys would increase by 1,840 hours per year ((96 cases currently * 5 hour increase in preparation time/case) + (16 new cases * 10 hours of preparation time/case) + 1200 hours of court time for 112 cases). The increase in workloads for judges and deputy clerks equates to .66 of a full-time position for each. The increased workload for the assistant district attorneys would require one additional position.

The Judicial System also estimates that defense attorney costs would increase. This estimate assumes a 33% indigency rate and that the increased workload for defense attorneys would be the same as the increased workload for assistant district attorneys. The estimated cost for defense attorneys is $30,360 (33% * 1,840 additional hours * $50/hour).

Also, the section of the bill which provides for a one-year disqualification from driving a commercial motor vehicle for a conviction of a regular DWI while driving a noncommercial vehicle is likely to have a substantial impact on the courts. However, because the Judicial System does not have any data indicating how many of the people convicted of regular DWI also drive commercial vehicles, the potential impact on the courts cannot be determined.

FISCAL IMPACT:	
1 District Attorney	$41,428 (effective 12/1/98);$68,894 annualized
Indigent Defense	$17,710 (effective 12/1/98); $30,360 annualized
Total	$59,138 (effective 12/1/98); $99,254 annualized

The resource needs are based on an aggregate, statewide basis as though the work were performed at a central location. In practice the workload will be spread throughout the state. The analysis also assumes the additional workload for judges and deputy clerks which equates to less than 1 position each can be absorbed within existing resources.

Assumptions & Methodology - Division of Motor Vehicles

This part of the bill reduces the permissible level of alcohol while driving a commercial vehicle from .04 to zero. The drivers license of any person charged with an offense subject to implied consent is subject to temporary and/or permanent revocation. The bill also allows for reinstatement of driving privileges and conditional driving privileges. Implementation of the bill would change the rules governing driving privileges. Therefore, program modifications to the Division's computerized system are required to implement the bill. However, the estimates for the cost of the additional programming were not available at the time this fiscal note was prepared.

FISCAL IMPACT: There is an impact on the Division of Motor Vehicles, but the estimated dollar amount is not available.

Assumptions & Methodology - Local Law Enforcement Agencies/State Highway Patrol

This part of the bill reduces the permissible level of alcohol while driving a commercial vehicle from .04 to zero. Local law enforcement estimates that this change would not result in any additional stops for violations. However, the change may increase the offense for which the vehicle operator is charged and may, consequently, increase the time required for each incident.

No data is available is estimate the dollar value of the impact and law enforcement assumes any impact would be negligible

FISCAL IMPACT: None

PART III - ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Bill Summary:

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required.

Assumptions & Methodology - Judicial System

This section reduces permissible blood alcohol level necessary for a DWI charge for drivers of school buses and child care vehicles from .04 to zero. While it is expected this will result in some new charges, there is no data available to project the increase and the Judicial System assumes negligible impact.

FISCAL IMPACT: None

Assumptions & Methodology - Division of Motor Vehicles

Same as for Part II.

FISCAL IMPACT: Same as for Part II.

Assumptions & Methodology - Local Law Enforcement Agencies/State Highway Patrol

Same as for Part II.

FISCAL IMPACT: Same as for Part II.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Bill Summary

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

Assumptions & Methodology - Judicial System

These sections provide for an automatic 30-day drivers license revocation for any driver under 21 years of age who is charged with an implied consent offense if results of a chemical analysis reveal the presence of any alcohol concentration at any relevant time after driving. During calendar 1997, there were 6,507 defendants charged with driving while consuming alcohol or within a relevant time after consumption. While this provision would apply to a substantial number of youthful drivers the short duration of the revocation may limit the frequency of hearings to contest these revocations or to request limited driving privileges. The Judicial System expects this provision to have an impact on the courts' workload. However, data is not available to estimate the impact in terms of hours of work or dollars.

FISCAL IMPACT: May be Impact; Estimate Unavailable

Assumptions & Methodology - Division of Motor Vehicles:

This part of the bill provides for the 30-day revocation of drivers license of drivers under 21 years of age who are charged with an implied consent offense or who have any level of alcohol concentration within a relevant time after driving. As with Parts II and III, modifications to the Division's system are required to implement this part of the bill. However, estimates for the cost were not available at the time this fiscal note was prepared.

FISCAL IMPACT: There is an impact on the Division of Motor Vehicles, but the estimated dollar amount is not available.

Assumptions & Methodology - Local Law Enforcement/State Highway Patrol

This part of the bill provides for the 30-day revocation of drivers license of drivers under 21 years of age who are charged with an implied consent offense or who have any level of alcohol concentration within a relevant time after driving. Local law enforcement estimates that this change would not result in any additional stops for violations. However, the change may increase the time required for each incident. No data is available is estimate the dollar value of the impact and law enforcement assumes negligible impact..

FISCAL IMPACT: None

PART V - MISCELLANEOUS PROVISIONS

Bill Summary:

Section 35 authorizes the Department of Public Instruction to hire a part-time person to administer the statewide or regional towing and storage contract for seized vehicles.

Assumptions & Methodology:

As discussed in Part I, the Fiscal Research Division estimates that one full-time Administrative Officer III would be needed to administer the statewide or regional towing and storage contract. The cost for the position is noted in Part I.

FISCAL IMPACT: See Part I.

TECHNICAL CONSIDERATIONS:

DOT/MIS notes its current heavy workload and Year 2000 initiatives and proposes an implementation date of October 1, 2000. The analysis assumes the effective dates as outlined in the bill.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Marilyn Chism
APPROVED BY:
DATE: **July 29, 1998**

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1336

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S1336ASE001.1 Page 1 of __

Date _____,1998

Comm. Sub. [YES]
Amends Title []
S1336-CSSE-001

Senator Cooper

moves to amend the bill on page 1, line 11, by rewriting the line to read:

"Sec. 1. G.S. 20-4.01(1b) reads as written:
'(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:
a. Grams of alcohol per 100 milliliters of blood; or
b. Grams of alcohol per 210 liters of breath.
The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. ~~#2~~ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Kerr
Sen.)

moves to amend the bill on page 35, line 37

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"drives a commercial motor vehicle, as defined in G.S. 20-4.01, ~~(30) b.~~ (3d) a. and (3d) b., upon any highway, any street,

SIGNED J Kerr

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Amendment Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

~~H. B. No.~~ _____ DATE 7/29/98

S. B. No. 1336 Amendment No. #3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) Rand
Sen.)

moves to amend the bill on page 18, line 23

( ) WHICH CHANGES THE TITLE

by striking everything after the period thru line 28.

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/29/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Arthur Mahon	GHP Raleigh, NC
George Reed	NC Council of Churches
Robert Weiss	Fiscal Research Division
Jim Lofton	NCAFI
Lawrence Davis	Womble Carlyle
Paul Stock	NC Bankers
Meredith Norris	Lawrence Bailey & Assoc
Susan Markham	EGHS
Susan Harrison	WCPSS
Amy Jo Bain	Smith Anderson
Brenda Dougherty	Sprint
Jon Moore	Sprint
Jo Roberts	AT&T

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/29/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Ferrell	HMCCCC PA
David Simmons	ZDA, PA
Andy Romanet	N.C. League of Municipalities
Zeb Alley	Premier Tours
John Bowdish	Zeb Alley P.A.
Leslie DeVaegan	NCCBI
Cam Cox	BPMHL
Jeanne Winner	NCSBA
Ann Belcher	SBE
Jan Cruttz	NCASA
Stacy Flannery	Non Profit Homes for the Aging

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/29/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Templeton	DC Sec. of State Dept. 300 N03
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf. Off Assn
Jim DRennan	Institute of Government
Tom Andrews	AOC
Lura Forcum	Lt. Gov's Office
Carrie Attmen	NC Science & Technology
Gordon W. Oer	DOR
Charles Calli	RETIRING
John May	NC CWA
Heather Fa	OSP
Joanna Bullock	GHP

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/29/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C. Parker	Bone & Associates
Martha Glass	DOA
John McMillan	Manning, Fulton & Skinner PA
Wes Parker	GHSP
Alan Hirsch	Atty Gen's Office
Jane P. Gray	DOJ
James Andrews	NC State AFL-CIO
Bernard Allen	SOS
Michael S. Pope	SOS
Frank Lewis	SOS
Matt Osborne	AOC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/29/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Miller	Bailey & Dixon LLP
Doug Roy	NCDOT
Patrice Roesler	NCACC
Kathryn Hunter	NCACC
[illegible]	NCRD

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JULY 30, 1998

AT 8:30 A.M. - ROOM 544

. SB 1336 - 1998 Gov DWI Amendments - Senator Odom

. HB 1356 - Electronic Commerce - Rep. Reynolds

SB 1571 - Regulate Ticket Broker's Fee - Senator Hoyle

(Added to Agenda) H.B. 1307 - Banner Elk Deed Recording - Rep. Thompson

SENATE FINANCE COMMITTEE

THURSDAY, JULY 30, 1998

8:30 A.M. - ROOM 544

The Senate Finance Committee met on Tursday, July 30, 1998 at 8:20 A.M. in Room 544. There were 17 Members of the Committee present. Senator John Kerr, Co-chairman, called the meeting to order and introduced the Pages, they were: Elizabeth Dalton from Rutherford County, sponsored by Senator Walter Dalton, Molly King from Raleigh, North Carolina, by Senator R. L. Martin and Julie Guthrie from Durham, North Carolina, sponsored by Senator Wib Gulley.

H. B. 1307 - Banner Elk Deed Recording (which was added to the Agenda)

Senator Kerr explained the bill. Senator Mark McDaniel moved for a "favorable" report, motion passed. (Copy of Bill is included in Minutes)

S. B. 1336 - 1998 Gov. DWI Amendments

Senator Fountain Odom came again to explain the bill. Senator Soles moved for adoption of the proposed committee substitute for the purpose of discussion, motion passed. Senator Odom explained the pcs. After several questions and comments from members of the committee, Mr. Joe Stewart with Division of Crime Control spoke on the bill as did Captain George Gray with the Division of Motor Vehicles. Senator Cooper moved for a "favorable" report, motion passed. (Copy of Proposed Committee Substitute is included with Minutes-bill was originally considered by the committee on July 29, 1998)

H. B. 1356 - Electronic Commerce

Representative Dennis Reynolds came to explain the bill. Senator Betsy Cochrane sent forward an amendment to the bill and moved that amendment be adopted, motion passed. Senator Cochrane moved to give the bill as amended a "favorable" report and note that bill be rolled into a committee substitute, motion passed. (Copy of Bill, Explanation, Fiscal Note, Amendment and Committee Substitute are included with the Minutes).

S. B. 1571 - Regulate Ticket Broker's Fee was not heard at this Meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report dated 7-30-98 is Attachment #2
Committee Report dated 8-3-98 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1307
Committee Substitute Favorable 7/15/98

Short Title: Banner Elk Deed Recording. (Local)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF BANNER ELK BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 305 of the Session Laws of 1963, as rewritten by Section 7 of S.L. 1997-410, reads as rewritten:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.

(3) If the property described in the deed is located in whole or in part in the Town of Banner Elk, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1336*
Judiciary Committee Substitute Adopted 7/21/98
Proposed Committee Substitute S1336-PCS6865-SE002

Short Title: 1998 Gov. DWI Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as rewritten:

"(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or~~ 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving

impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair market value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent ~~Party~~ owner. -- A motor vehicle ~~owner who:~~ owner:

a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor vehicle owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

~~(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.~~

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued.~~ issued at the time of seizure.

~~(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense ~~of impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section,~~ section, and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county

where the motor vehicle was seized to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- ~~The trial judge~~ Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.~~ underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the ~~sentencing hearing, or at a subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was the only motor vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was not the only vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent ~~party~~ owner as defined ~~by subdivision (a1)(2) of~~ in this section, in which case the trial judge shall order the motor vehicle released to the innocent ~~party vehicle~~ owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge ~~shall either:~~ shall:

(1) a. Authorize the ~~school board to sell~~ sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

~~(2)~~ b. ~~Release~~ Order the motor vehicle released to an intervening lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this ~~section.~~ section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that~~ the petitioner is an ~~"innocent party"~~, 'innocent owner', as defined by this section, a judge shall order the motor vehicle ~~returned~~ released to ~~the~~ that ~~owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and

~~(3) The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent ~~vehicle~~ owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately

reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest ~~is equal to or greater than the fair market value of the vehicle;~~ has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the ~~lienholder; and~~ lienholder;

(4) ~~The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.~~ The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~"

Section 3. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.**

(a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person ~~in violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the Division as soon as practical but no later than 72 hours after seizure of the motor vehicle and the agency designated under subsection (b1) of this section of the seizure in accordance with procedures established by the ~~Division.~~ Division and the agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an agency designated by the Governor shall issue written notification of impoundment to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. ~~to a location designated by the county school board for the county in which the operator of the vehicle is charged and~~ Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the constructive possession of the ~~school board~~ county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of

Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school board~~ board of education may elect to have seized motor vehicles stored on property owned or leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for ~~storage.~~ storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county ~~school board~~ board of education may contract with a commercial towing and storage facility or other private entity for the ~~storage~~ towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ~~five~~ ten dollars ~~($5.00)~~ ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, ~~or a lienholder of a vehicle,~~ other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a ~~qualified~~ nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;

~~(2) All towing and storage charges have been paid;~~

(3) ~~Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3,~~ A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of ~~trial of the operator;~~ any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) ~~If a qualified vehicle owner, execution~~ Execution of an acknowledgment as described in G.S. 20-28.2(a1); ~~and~~

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an

acknowledgment naming the operator of the seized ~~vehicle.~~ motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district

attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) Default on the obligation secured by the motor vehicle has occurred;

(2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

(3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was seized all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

(4) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or the motor vehicle owner; and

(5) The forfeited motor vehicle had not previously been released to the lienholder.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

(1) The defendant;

(2) The motor vehicle owner who owned the motor vehicle immediately prior to forfeiture; or

(3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle was seized. If the motor vehicle is declared a total loss by the insurance company responsible for repairs to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other

provisions in this Chapter, nothing in this section shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders, and the proceeds of the sale shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution

is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due, shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a 'compelling reason' for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal his conviction to superior court, the appeal shall be set down for trial on the next available trial date and the limitations on continuances and requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall apply."

Section 4. G.S. 20-28.4 reads as rewritten:

"**§ 20-28.4. Release of impounded motor vehicles by judge.**

~~(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(c).~~

~~(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

~~(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~ an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at ~~the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),~~ a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the driver's license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be ~~returned~~ released to the motor vehicle ~~owner.~~ owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund.~~"

Section 5. G.S. 20-28.5 reads as rewritten:

"**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

(a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale conducted in accordance with the provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of the General ~~Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county ~~school board~~ board of education or a person acting on its behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale~~ Notice of sale, including the date, time, location, and manner of sale shall ~~also~~ be given by ~~certified mail, return receipt requested,~~ first-class mail to all motor vehicle owners at the address shown by the ~~Division's~~ records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written notice of sale shall also be ~~by certified mail, return receipt requested,~~ given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner

who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3) shall first be applied to the cost of sale and then to satisfy towing and storage ~~liens and the cost of sale.~~ costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded ~~with the Division~~ prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- The county board of education may, at its option, retain any forfeited motor vehicle for its ~~use.~~ use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by the county board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration

from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"**§ 20-55. Examination of registration records and index of ~~stolen~~ seized, stolen, and recovered vehicles.**

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of ~~stolen~~ seized, stolen, and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. - The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident.
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"**§ 1-339.4. Who may hold sale.**

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; ~~or~~
(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;

(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;

(7) In a receivership proceeding, the receiver; or

(8) In a proceeding to sell property of a trust, the ~~trustee;~~ trustee.

~~(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf.~~"

Section 14. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify~~

~~lienor.~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days

therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following words when used in this Article shall have the following meanings:

(1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. "Consideration" as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.

(4) 'Commissioner' shall mean the Commissioner of Insurance.

(5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) 'Obligor' shall mean a principal or a surety on a bail bond.

(7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond.~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. "Runner" does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the~~

~~offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B."

Section 19. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.

(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.

(3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.

(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.

(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(a1) 10-Day Disqualification. -- A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 20. G.S. 20-17.6(a) reads as rewritten:

"(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked under G.S. 20-17(2)~~ DWI.

(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00 and less than 0.04, if the person's drivers license was revoked under G.S. 20-17(a)(13).

(5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with an alcohol concentration of greater than 0.00, if the person's drivers license was revoked under G.S. 20-17(a)(14)."

Section 21. G.S. 20-19 is amended to add a new subsection (c2) to read:

"(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year."

Section 22. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 23. Article 3 of Chapter 20, is amended by adding a new section to read:

"**§ 138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01 (3d)a. and (3d)b., upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.

(b) Implied Consent Offense. -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S 20-17.4(a)(6)."

Section 24. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged. --~~ Punishment. -- The offense in this section is a ~~Class 1~~ misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, ~~but~~ and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 25. G.S. 20-179(a) reads as rewritten:

"(a) Sentencing Hearing Required. -- After a conviction for impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration."

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 26. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under

contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 27. Article 3 of Chapter 20, is amended by adding a new section to read:

"**§ 138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.

(b) Implied Consent Offense. -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 28. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 29. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~ vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 30. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) ~~He~~ The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and~~ or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) ~~He~~ The person is charged with an implied-consent offense."

PART V. MISCELLANEOUS PROVISIONS.

Section 31. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a part-time person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

Section 32. The Joint Legislative Education Oversight Committee shall study the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-28.9 and the financial impact on county boards of education. The study shall include, among other relevant information, a statistical analysis of the number of vehicles seized, the length of time vehicles are held until disposition by the court, the percentage of seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage costs, and county school administrative costs associated with the seizure and forfeiture of the vehicles. The Committee shall recommend ways to make the procedure and process for managing seized and forfeited vehicles more efficient and effective. The Committee may report to the 1999 Session of the 1999 General Assembly and the 2000 Session of the 1999 General Assembly.

PART VI. EFFECTIVE DATE.

Section 33. Parts I and V of this act become effective October 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, and IV of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of this act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1356*
Committee Substitute Favorable 6/24/98
Senate Commerce Committee Substitute Adopted 7/15/98

Short Title: Electronic Commerce Act. (Public)

Sponsors:

Referred to: Finance.

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

(3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.

(4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(5) 'Secretary' means Secretary of State.

(6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Certification authority licensing.

All persons acting as a certification authority with respect to transactions under this Article shall be licensed by the Secretary prior to representing themselves or acting as a certification authority under this Article. Certification authority licensing standards set by the Secretary may include, but are not limited to, technical, physical, procedural, and personnel security controls, repository obligations, and financial responsibility standards. Upon payment of the required fees, a certification authority meeting the standards adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of certification authorities complying with the standards adopted by the Secretary may be renewed for additional one-year terms upon payment of the required renewal fee.

"§ 66-58.4. Use of electronic signatures.

(a) All public agencies may accept electronic signatures.

(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.5. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"**§ 66-58.6. Enforcement.**

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

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

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

"**§ 66-58.7. Civil penalty.**

The Secretary may assess a civil penalty of not more than five thousand dollars ($5,000) per violation against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this section, the Secretary shall give due consideration to each of the following factors:

(1) The organizational size of the certification authority cited;
(2) The good faith of the certification authority cited;
(3) The gravity of the violation;
(4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and
(5) The risk of harm caused by the violation.

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"**§ 66-58.8. Criminal penalty.**

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, with intent to defraud, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"**§ 66-58.9. Exemptions.**

This Article shall not apply to any of the following:

(1) Electronic signatures and facsimile signatures that are otherwise allowed by law.

(2) The execution of documents filed with, issued, or entered by a court of the General Court of Justice. However, a document or transaction validly executed under this Article is not rendered invalid because it is filed with, or attached to, a document issued or entered by a court of the General Court of Justice.

(3) Transactions where a public agency is not a party.

"**§ 66-58.10. Rule making.**

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

(1) Definitions, including, but not limited to, more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts not to exceed five thousand dollars ($5,000) per year; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund."

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including, but not limited to, the Information Resource Management Commission and the North Carolina Electronics and Information Technologies Association. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

Section 5. Section 1 of this act becomes effective January 1, 1999. The remainder of this act is effective when it becomes law. The Secretary of State may adopt rules prior to January 1, 1999, to become effective on or after January 1, 1999, to implement Section 1 of this act.

EXPLANATION OF HOUSE BILL 1356 (3rd Edition: *Electronic Commerce Act*

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 29, 1998
SPONSOR: Representative Reynolds

The Senate Commerce Committee Substitute adopted July 15, 1998 is intended to facilitate electronic commerce between private and public entities, and between public entities, by providing for electronic signatures. It was recommended by the Legislative Research Commission Committee on Information Technology. In House Finance the following changes were made to the bill: definitions were added, electronic signature certification authorities were required to be licensed by the Secretary of State, the civil penalty against certification authorities was reduced from $100,000 to $5,000 per violation, a wilful violation of the Article was made a Class I felony, and electronic and facsimile signatures otherwise allowed by law, court documents, and transactions where a public agency is not a party were exempted from the act. The Senate Commerce Committee bolstered the standards set by the Secretary of State for licensing a certification authority. (See Sec. 66-58.3)

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

The new statutory section G.S. 66-58.3 requires all persons acting as a certification authority under the Bill to be licensed by the Secretary of State as a licensed certification authority. In order to be licensed, the entity must meet the standards adopted by the Secretary for technical, physical, procedural and personnel security controls, repository obligations, and financial responsibility standards.

An electronic signature is valid and must be accepted as a manual signature, if it meets the following criteria:

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

The act grants authority to the Secretary of State to impose licensing and renewal fees in amounts up to $5,000. It gives the Secretary the power to investigate violations of the rules and other conduct indicating fraudulent or unlawful activities in violation of this act. Included in these powers is the power to impose civil penalties for noncompliance with the act or rules promulgated under it of not more than $5,000 per violation.

The bill also provides for criminal penalties as a Class I felony for violating this Article, or any rule or order under this Article with the intent to defraud.

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

Exempt from this act are electronic signatures otherwise allowed by law and the execution of documents filed with, issed, or entered by a court, transactions where a public agency is not a party, and signatures required to be notarized.

The Secretary of State is authorized to adopt rules to implement the act, and is given special authority to adopt as temporary rules provisions for implementing certification technology provisions of this act. Under the amendment to G.S. 150B-21.1, in order to use this temporary rule provision the Secretary must publish the proposed temporary rule at least 30 days in advance, must accept public comments, and must hold at least one public hearing to receive comments.

Section 4 of the bill directs the LRC to study whether this law should be expanded to include electronic commerce not involving public agencies.

Section 1 of the act becomes effective January 1, 1999, but the remainder of the act becomes effective when it becomes law. The Secretary of State is authorized to adopt rules to implement this bill prior to January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1356

SHORT TITLE: Electronic Commerce Act

SPONSOR(S): Representatives Reynolds, Baker, Brawley, Clary, Cole, Dickson, Earle, Eddins, Gray, Hurley, McComas, Rayfield, Sexton, Shubert, Tolson, Weatherly, and G. Wilson

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES	$75,000	$75,000	$75,000	$75,000	$75,000

POSITIONS: 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: Upon Passage.

BILL SUMMARY:
Amends Section 1, Chapter 66 of the General Statutes by adding Article 11A. The new Article facilitates electronic commerce with and by public entities of the State of North Carolina by recognizing the validity of electronic signatures. Article 11A further authorizes the Secretary of State to regulate electronic signatures and certification authorities, and to assess a civil penalty (up to $100,000) against any person who violates a provision of the Article.

ASSUMPTIONS AND METHODOLOGY:
The bill requires the Department of the Secretary of State to perform a new regulatory function in a fluid and relatively complex technological area. The Department of the Secretary of State requests an additional position to perform the work required by the new function. The function

requires a blend of legal/regulatory and technical skills. The individual selected for the position would be required to participate in establishing rules for the use of electronic signatures. Further, the individual would be required to evaluate and monitor certification authorities. The Department requests $75,000 for the new position.

Public-sector experience with the use of electronic signatures remains limited. As a result, a reliable estimate of the potential revenue from penalties assessed (as authorized by this bill) does not exist at this time.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION 733-4910 DATE : July 24, 1998

PREPARED BY: Dwayne Pinkney

APPROVED BY:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1356

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

H1356-ALA-001 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Third Edition

moves to amend the bill on page 4, line ~~20~~ 24 and ~~21~~ 25,
by adding between the lines a new section to read:
"§ 66-58.11. Reciprocal agreements.
The Secretary is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized public agencies of other jurisdictions having a law substantially similar to this Article so as to further the purpose of this Article."

SIGNED [redacted] Bobby Cochrane
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1356*
Committee Substitute Favorable 6/24/98
Senate Commerce Committee Substitute Adopted 7/15/98
Proposed Senate Committee Substitute H1356-PCS2405-LB

Short Title: Electronic Commerce Act. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce by vouching for the

relationship between a person or public agency and that person's or public agency's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

(3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.

(4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(5) 'Secretary' means Secretary of State.

(6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Certification authority licensing.

All persons acting as a certification authority with respect to transactions under this Article shall be licensed by the Secretary prior to representing themselves or acting as a certification authority under this Article. Certification authority licensing standards set by the Secretary may include, but are not limited to, technical, physical, procedural, and personnel security controls, repository obligations, and financial responsibility standards. Upon payment of the required fees, a certification authority meeting the standards adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of certification authorities complying with the standards adopted by the Secretary may be renewed for additional one-year terms upon payment of the required renewal fee.

"§ 66-58.4. Use of electronic signatures.

(a) All public agencies may accept electronic signatures.

(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.5. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"**§ 66-58.6. Enforcement.**

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

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

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

"**§ 66-58.7. Civil penalty.**

The Secretary may assess a civil penalty of not more than five thousand dollars ($5,000) per violation against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this section, the Secretary shall give due consideration to each of the following factors:

(1) The organizational size of the certification authority cited;

(2) The good faith of the certification authority cited;

(3) The gravity of the violation;

(4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and

(5) The risk of harm caused by the violation.

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"**§ 66-58.8. Criminal penalty.**

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, with intent to defraud, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"**§ 66-58.9. Exemptions.**

This Article shall not apply to any of the following:

(1) Electronic signatures and facsimile signatures that are otherwise allowed by law.

(2) The execution of documents filed with, issued, or entered by a court of the General Court of Justice. However, a document or transaction validly executed under this Article is not rendered invalid because it is filed with, or attached to, a document issued or entered by a court of the General Court of Justice.

(3) Transactions where a public agency is not a party.

"**§ 66-58.10. Rule making.**

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

(1) Definitions, including, but not limited to, more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts not to exceed five thousand dollars ($5,000) per year; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund.

"**§ 66-58.11. Reciprocal agreements.**

The Secretary is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized public agencies of other jurisdictions having a law substantially similar to this Article so as to further the purpose of this Article."

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule. When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including, but not limited to, the Information Resource Management Commission and the North Carolina Electronics and Information Technologies Association. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

Section 5. Section 1 of this act becomes effective January 1, 1999. The remainder of this act is effective when it becomes law. The Secretary of State may adopt rules prior to January 1, 1999, to become effective on or after January 1, 1999, to implement Section 1 of this act.

(attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/30/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Templeton	Dept. Sec. of State
Matt Osborne	AOC
J. Edwards	DMV ENFORCEMENT
[illegible]	DMV
[illegible]	DMV ENFORCEMENT
Tom Andrews	AOC
Doug Lassiter	NC STA
Denny McGuire	NC Dept of Commerce / ITS
[illegible]	Moore & Van Allen
[illegible]	Atty Gen's Office
Phil Teeter	Atty Gen'l Office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/30/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wes Parker	GHSP / Lt. Governor
Meredith Morris	Laurence Bentley & Assoc.
mike Shea	self
James Andrews	NC State AFL-CIO
Susan Markham	EGHS
David Simmons	ZOA, PA
John McMillan	Maupin Taylor & Stroud PA
Deanne Winner	NCSBA
Susan Harrison	WCPSS
David Ferrell	Hpr CCC PA
Cathie Allen	NC Science & Tech

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/30/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martha Gam	DOA
Joe Dunn	CePS
Rob Sawtell	Lobbyist

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David W. Hoyle, Co-Chair

Thursday, July 30, 1998

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

FAVORABLE

H.B.(CS)**1307** Banner Elk Deed Recording
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1356** Electronic Commerce Act
Draft Number: PCS2405
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: None

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David W. Hoyle, Co-Chair

Monday, August 3,
~~Thursday, November 12,~~ 1998

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1336** 1998 Gov. DWI Amendments

Draft Number:	PCS6865
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up in Senate Finance Meeting on 7-30-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, AUGUST 4, 1998

12 NOON - ROOM 544

SB 1571 - Regulate Ticket Broker's Fee - Sen. Hoyle

HB 1367 - Sales Tax Changes - Rep. Hill

HB 1422 - Make Credits Constitutional - Rep. C. Wilson

HB 1529 - Horse Promotion Assessment - Rep. Brown

HB 1546 - Greenville Fees - Weedy Lots - Rep. Tolson

HB 1568 - St. Paul's Occupancy Tax - Rep. Yongue

HB 1579 - Montgomery Delinquent Utility Bill - Rep. Hightower

SENATE FINANCE COMMITTEE

TUESDAY, AUGUST 4, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, August 4, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 25 committee members present. Senator Kerr introduced the pages: Jamey Wilkinson from Kenly, sponsored by Senator Reeves, Lee Gignac from Dallas, sponsored by Senator Hoyle, and Brad Bynum from Apex, sponsored by Senator Blust.

H.B. 1568 - St. Paul's Occupancy Tax.

Representative Yongue explained his bill and Senator Phillips moved for the adoption of a Committee Substitute. Motion carried. Mr. John E. Marshall, Mayor of Statesville, was recognized and spoke on this bill. Mr. Gerry Hancock, representing Travel and Tourism in North Carolina, spoke in opposition of adding Statesville to this bill. Mr. Jim Hobbs, representing the NC Hotel and Motel Association, also spoke in opposition of adding Statesville. After discussion and questions being answered, Senator Phillips moved for a Favorable Report for the Committee Sub and the motion carried. Copy of Bill (CS # 2), new Committee Sub and Fiscal Note included in the Minutes.

H.B. 1367 - Sales Tax Changes.

Representative Hill was recognized to explain his bill. On motion by Senator Carrington, a Committee Substitute was adopted. After a brief discussion, Senator Carrington made a motion that this Committee Sub be given a Favorable Report and the motion carried. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the Minutes.

H. B. 1422 - Make Credits Constitutional.

Representative Connie Wilson was recognized to explain her bill. Richard Bostic, Fiscal Research, gave a further explanation. Senator Rand moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the Minutes.

H.B. 1529 - Horse Promotion Assessment.

Representative Brown was recognized to explain his bill. After his explanation, there were several questions from the committee members. Mr. Tom Grubb, horse owner from Apex, spoke in opposition to this bill. After more discussion, the Chairs decided to pull this bill and it will be discussed further at a later date. Copy of HB 1529, Fiscal Note and information from the North Carolina Horse Council included in the Minutes.

H.B. 1546 - Greenville Fees - Weedy Lots.

Representative Tolson explained his bill. Senator Wellons offered an Amendment which was adopted on his motion. Senator Rand moved for a Favorable Report, as amended. No vote was taken and the bill will be further discussed at another meeting. Copy of Bill, Amendment and Fiscal Note included in the Minutes.

H.B. 1309 - Banner Elk Annexations.

Representative Thompson explained this bill and on motion by Senator Webster, the bill was given a Favorable Report. Copy of Bill (CS # 2) included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

HB 1579 was not discussed in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1568
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/15/98

Short Title: St. Pauls Occupancy Tax. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The board of commissioners of the Town of St. Pauls may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of St. Pauls shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the St. Pauls Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in St. Pauls and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed one percent (1%) of gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Tourism Development Authority are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 2. Administrative Provisions. Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, and Shelby, to the Town of St. Pauls, and to the municipalities in Brunswick County."

Section 3. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of St. Pauls shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the

preceding quarter and for the year in such detail as the board of commissioners may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1568
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/15/98
Proposed Senate Committee Substitute H1568-PCS3166-RK3

Short Title: St. Pauls/Statesville Occupancy Tax. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AUTHORIZE THE CITY OF STATESVILLE TO LEVY AN ADDITIONAL ROOM OCCUPANCY TAX TO FUND TOURISM PROMOTION AND OPERATING EXPENSES OF A CIVIC CENTER.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The board of commissioners of the Town of St. Pauls may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of St. Pauls shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the St. Pauls Tourism Development Authority. The Authority shall use at least two-thirds of the

funds remitted to it under this subsection to promote travel and tourism in St. Pauls and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed one percent (1%) of gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Tourism Development Authority are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of St. Pauls shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board of commissioners may require.

Section 3. Part V of Chapter 570 of the 1985 Session Laws, as amended by Chapter 930 of the 1985 Session Laws, reads as rewritten:

"Part V. Statesville Occupancy Tax.

Sec. 16. Authorization and Scope. -- The city council of the City of Statesville may, if the Board of Commissioners of Iredell County has adopted a resolution under Section 15 of this act, ~~by resolution~~ levy a tax ~~on~~ of up to three percent (3%) of the gross receipts from the rental of accommodations within the ~~corporate limits of the city, not to exceed three percent (3%).~~ city that are subject to the sales tax imposed by the State under G.S. 105-164.4(a)(3). ~~This tax applies to the rental of accommodations subject to sales tax under G.S. 105-164.4(3).~~

Sec. 16.1. Additional Tax. -- In addition to the tax authorized by Section 16 of this Part, the city council of the City of Statesville may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under Section 16. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with the provisions of this Part. The City of Statesville may not levy a tax under this section unless it also levies the tax authorized under Section 16 of this Part.

Sec. 17. Definition of Collector. -- As used in this Part, 'collector' means the Iredell County Tax Collector if the City of Statesville and Iredell County have so provided by contract, otherwise it means the city finance officer and/or city clerk, as may be designated by resolution of the city council.

Sec. 18. Collector to Collect Tax. -- The collector shall collect and administer the occupancy tax levied by the city pursuant to this Part. The city council may adopt rules as needed by the collector to implement this Part.

Sec. 19. Administration. -- A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the 15th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.~~

~~Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission. In addition, any person who~~

~~refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid.~~

~~Any person who willfully attempts in any manner to evade the occupancy tax or who willfully fails to pay the tax or make and file the required return, shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

Sec. 20. Use of Proceeds. -- The collector shall remit the proceeds of ~~this tax~~ the taxes levied under this Part to the city on a monthly basis. The city shall allocate the net proceeds of the three percent (3%) tax levied under Section 16 ~~The funds received by the city pursuant to this Part shall be allocated~~ to a special fund and ~~used only~~ use them only for ~~operation~~ construction, operation, and maintenance of a civic center, for payment of interest or retiring principal on debt related to a civic center, or for promotion of travel and tourism. The city shall remit one-half of the net proceeds of the two percent (2%) tax levied under Section 16.1 to the Statesville Tourism Development Authority to be used to promote travel and tourism in the City of Statesville. The city shall use the remaining net proceeds of the two percent (2%) tax levied under Section 16.1 for operation and maintenance of a civic center and for payment of interest or retiring principal on debt related to a civic center.

The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Sec. 21. Collection Powers. -- The collector may collect any unpaid taxes levied under this Part through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The collector has the same enforcement powers concerning the tax imposed under this Part as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~Sec. 22. The city council may by resolution repeal the levy of the occupancy tax authorized by this Part. No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged by the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~

~~Sec. 23. The definitions set forth in G.S. 105-164.3 apply to this Part insofar as those definitions are not inconsistent with this Part.~~

Sec. 24. Civic Center Authority. -- Before levying a tax under Section 16 of this Part, the City of Statesville shall either establish a civic center authority, adopt a resolution that the city intends to pursue and develop goals involving a civic center and travel and tourism in the City of Statesville, or by resolution provide that a civic center shall be administered as or by a department of the city. If an authority is established, it shall have the number of members set forth in the resolution establishing it, which members shall be appointed by the Mayor. The city council may grant to the Authority any or all of the powers provided by Section 3 of Chapter 329, Session Laws of 1971.

Sec. 24.1. Statesville Tourism Development Authority. -- (a) Appointment and Membership. When the Statesville City Council adopts a resolution levying a room occupancy tax under Section 16.1 of this Part, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The Statesville City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Statesville shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the funds remitted to it under this Part for the purposes provided in Section 20 of this Part. The Authority shall promote travel, tourism, and conventions in the city and sponsor tourist-related events and activities in the city.

(c) Budget; Reports. The Authority may not expend any funds except pursuant to a budget that has been approved by the Statesville City Council. The Authority shall submit its proposed budgets to the Statesville City Council for review and shall report quarterly and at the close of the fiscal year to the Statesville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require."

Section 4. City administrative provisions. -- Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, ~~and~~ Shelby, and Statesville, to the Town of St. Pauls and to the municipalities in Brunswick County."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B.1568

SHORT TITLE: St. Pauls Occupancy Tax

SPONSOR(S): Rep. Yongue

FISCAL IMPACT

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

	Dollars				
	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
	NO GENERAL FUND IMPACT				
Town of St. Pauls	**$60**	**$61**	**$63**	**$64**	**$67**
St. Pauls Tourism Dev. Authority	**$5940**	**$6100**	**$6271**	**$6441**	**$6614**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of St. Pauls.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Town of St. Pauls to levy an occupancy tax. The tax applies to the rental of any room, lodging, or accommodation within the city limits. The occupancy tax rate is 1% of gross receipts from the rental of accommodations. The tax does not apply to lodging provided by a nonprofit, if it is furthering the purpose of the nonprofit. The town must forward the net proceeds of the occupancy tax to the Tourism Development Authority. The Authority must use at least 2/3 of the funds to promote travel and tourism. The Authority may spend the remainder on tourism-related expenses. The Town of St. Pauls may charge a 1% fee for administration. The bill directs the Board of Commissioners to create a Tourism Development Authority and set its membership. The bill also directs the Commission to set compensation for the Authority members. Under the bill, at least 1/3 of the members of the Tourism Development Authority must be associated with businesses who levy the tax, and ¾ of the members must be active in the town's tourism promotion efforts. The bill directs the town finance officer to serve as the ex officio finance officer of the Authority. The Authority must submit quarterly and annual reports to the County Commission.

ASSUMPTIONS AND METHODOLOGY: Currently St. Pauls does not levy an occupancy tax. According to the Town Manager, there is one motel inside the city limits. No motel development is expected in the next five years. Based on receipts from that establishment, the Town Manager estimates total occupancy tax receipts of $6,000 annually. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:
DATE: August 3, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1367

Short Title: Sales Tax Changes. (Public)

Sponsors: Representatives Hill, Brawley, Cansler, Capps, Gray, Neely, Ramsey, C. Wilson; Allred, Church, Davis, Shubert, Warner, and Yongue.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax

due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- ~~Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a

certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

"(f) ~~Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

"(4b) A person who sells tangible personal property at a ~~flea~~ specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the ~~flea~~ specialty market. ~~A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.~~ The term "specialty market" has the same meaning as defined in G.S. 66-250."

Section 6. G.S. 66-252 reads as rewritten:

"**§ 66-252. Display and possession of ~~retail sales tax license.~~ certificate of registration.**

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the ~~license~~ certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license,~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

(1) A copy of the ~~license.~~ certificate.

(2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"**§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"**§ 66-257. Misdemeanor violations.**

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license,~~ certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective January 1, 1999. Sections 2 through 8 of this act become effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1367
Proposed Senate Committee Substitute H1367-PCS3167-RB

Short Title: Sales Tax Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax

due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- ~~Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a

certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

"(f) ~~Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

"(4b) A person who sells tangible personal property at a ~~flea~~ specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the ~~flea~~ specialty market. ~~A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.~~ The term 'specialty market' has the same meaning as defined in G.S. 66-250."

Section 6. G.S. 66-252 reads as rewritten:

"**§ 66-252. Display and possession of ~~retail sales tax license.~~ certificate of registration.**

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the ~~license~~ certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license,~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

(1) A copy of the ~~license.~~ certificate.

(2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"**§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"**§ 66-257. Misdemeanor violations.**

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license,~~ certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective July 1, 1999. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1367:
Sales Tax Changes

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 3, 1998
SPONSOR: Representative Hill

House Bill 1367 makes three changes to the sales tax statutes that the Department of Revenue requested the Revenue Laws Study Committee to recommend:

- It raises the sales tax quarterly threshold from $50 to $100, effective July 1, 1999. The original bill made this provision effective January 1, 1999. The **proposed committee substitute** changes this effective date.
- It repeals the annual wholesale sales tax license, effective July 1, 1998.
- It changes the name of the retail sales tax license to certificate of registration.

The Senate Finance Committee considered this bill earlier this session on June 23, 1998. At the time, the committee was concerned about the bill's fiscal impact. Yesterday, the Senate gave final approval to the conference report for Senate Bill 1252, Simplify Privilege License Tax, which generated $1.5 million for the 1998-99 fiscal year. Enactment of this bill provided the revenue to offset the loss created by the repeal of the annual wholesale sales tax license.

<u>Sales Tax Quarterly Threshold</u>

Under current law, taxpayers that are liable for less than $50.00 a month in State and local sales and use taxes may file returns and remit the sales and use taxes owed on a quarterly basis. Taxpayers that are consistently liable for at least $20,000 a month in State and local sales and use taxes must file returns and remit taxes on a semi-monthly basis. All other taxpayers must file returns and remit taxes on a monthly basis.

Section 1 of the bill increases the sales tax quarterly threshold from $50 to $100. This change means that approximately 10,000 taxpayers that are now filing monthly sales and use tax returns will be able to file quarterly returns. The change will reduce the number of returns currently being filed by one-third. The threshold was last increased in 1991 from $25 to $50. This section becomes effective July 1, 1999. This change in the law will mean that approximately $2 million that would have been collected in fiscal year 1999-2000 will not be collected until fiscal year 2000-01 because two months of collections are shifted into the 2000-01 fiscal year.

Repeal of the Wholesale Sales Tax License

Under current law, a wholesale merchant must obtain both a wholesale sales tax license and a certificate of registration, referred to in the statute as a retail sales tax license. The form for the two licenses is the same form. The information necessary to obtain both of these licenses is the same. The only difference is that the wholesale sales tax license is an annual license that costs $25. The certificate of registration needs to be acquired only once and it costs $15.

Section 2 of the bill repeals the wholesale sales tax license. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes contains one statute and that statute imposes an annual privilege license tax of $25 on wholesale merchants. The Department does not need the information from this license because the wholesale merchant has already provided the Department with the information it needs on the certificate of registration. The tax is also expensive to collect and document and it is a nuisance tax for wholesale businesses to report and pay.

Section 3 rewrites the law to clarify that both wholesale merchants and retailers must obtain a certificate of registration before beginning business. Although the statute refers to the certificate as a "retail sales tax license", it must be obtained by both wholesale merchants and retailers because a privilege tax is imposed on both of them under the sales and use tax article.

The section changes the name of the license to a "certificate of registration" because that more accurately reflects the nature of the document. It also corresponds to the name it is most commonly known as in the business community: a "Merchant's Certificate of Registration". Unlike the annual wholesale sales tax license, the certificate of registration needs to be obtained only once. It is valid unless it is revoked because the retailer or wholesale merchant fails to comply with the sales and use tax law. In the case of a retailer, the certificate becomes void if the retailer does not make any sales for a period of 18 months. If the certificate is revoked or becomes void, the retailer or wholesale merchant must register with the Department and obtain a new certificate of registration before engaging in business.

Sections 4 through 8 of the bill make conforming changes in the sales and use tax statutes and in the Article 32 of Chapter 66 of the General Statutes, which governs peddlers, itinerant merchants, and specialty markets. The changes made in sections 2 through 8 of the bill become effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1367 (Senate Finance Committee Substitute)

SHORT TITLE: Sales Tax Changes

SPONSOR(S): Representatives Hill, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Wholesale License	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)
Threshold		($2,000,000)			
Net Change	**($1,250,000)**	**($3,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**

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

EFFECTIVE DATE: Section 1(threshold) becomes effective July 1, 1999. The remainder of the act is effective when it becomes law.

BILL SUMMARY: This act repeals the annual $25 wholesale license tax and changes the name of the retail sales tax license to certificate of registration. The bill also increases the quarterly filing threshold for sales tax from $50 to $100.

ASSUMPTIONS AND METHODOLOGY:

Filing Threshold

Businesses that are liable for less than $50 in sales and use tax remit this tax to the Department of Revenue on a quarterly basis. Section 1 of the bill raises the filing threshold from $50 to $100 beginning July 1, 1999. After analyzing sales and use tax collections and the number of accounts by tax bracket, the Department of Revenue's Tax Research Division estimates that this will affect 10,000 taxpayers and will shift $2 million in collections from FY 1999-00 to FY 2000-01.

There is no actual loss of income, but on a cash flow basis there will be $2 million less to spend on the FY 1999-00 budget.

Wholesale License

Section 2 of the bill repeals the annual $25 wholesale license. The Department of Revenue reports $1.25 million in revenue from this tax each year. Since the Director of the Sales Tax Division projects little or no growth in wholesale license revenues, this memo assumes a flat growth rate for this license. Sections 3 through 8 simply change the name of the retail sales tax license to certificate of registration.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic, Linda Struyk Millsaps
APPROVED BY:
DATE: August 3, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1422

Short Title: Make Credits Constitutional. (Public)

Sponsors: Representatives C. Wilson, Brawley, Cansler, Capps, Gray, Hill, Neely, and Ramsey.

Referred to: Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE UNCONSTITUTIONAL RESTRICTIONS ON INDIVIDUAL INCOME TAX CREDITS FOR CHILD CARE AND FOR CONSTRUCTING DWELLINGS FOR THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.1 reads as rewritten:

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

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

face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Building Accessibility Section of the Department of Insurance."

Section 2. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. ~~No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State.~~"

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

EXPLANATION OF HOUSE BILL 1422:
Make Credits Constitutional

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 3, 1998
SPONSOR: Representative Connie Wilson
Recommended by Revenue Laws Study Committee

House Bill 1422 amends two individual income tax credits to remove restrictions that prevent nonresidents from taking the credits. These restrictions are probably unconstitutional in light of a recent United States Supreme Court case. The bill is effective for taxable years beginning on or after January 1, 1998.

On January 21, 1998, the United States Supreme Court held in Lunding v. New York that a state's tax laws must treat nonresidents on terms of `substantial equality' with residents. The Court found that New York's individual income tax could not deny the alimony deduction to nonresidents while granting it to residents. The Court concluded that while the Privileges and Immunities Clause[1] of the United States Constitution affords states considerable discretion in formulating their income tax laws, there must be a substantial reason for the difference in treatment of residents and nonresidents within a tax structure.

North Carolina has two individual income tax credits that only residents may claim: the credit for construction of dwelling units for handicapped persons and the credit for child care and certain employment-related expenses. As discussed below, there does not appear to be any reason, much less a substantial one, for prohibiting nonresidents from taking either credit. It appears, therefore, that the part of each credit limiting it to residents would likely be ruled unconstitutional if challenged. House Bill 1422 removes the restriction of the construction credit to residents, and modifies the child care credit so that a nonresident may take a proportional amount of the credit based on the percentage of his or her income that is taxable to North Carolina.

G.S. 105-151.1 grants an individual income tax credit to those residents who construct multi-family rental units that conform with mandatory building code requirements related to accessibility by the handicapped. The dwelling units must be located in North Carolina. The residence of the owner bears no relation to the benefit to this State of having handicapped-accessible dwellings constructed. Furthermore, the same credit is allowed under the corporate

---

[1] Section 2 of Article IV of the United States Constitution.

income tax law, but without any restriction based on the residence or domicile of the taxpayer that constructs the dwelling units.

G.S. 105-151.11 grants an individual income tax credit for child care or similar expenses incurred so the taxpayer may be gainfully employed. For nonresidents employed in North Carolina, the expenses would be directly related to the taxpayer's North Carolina income and thus there seems to be a substantial reason that the credit should be allowed rather than disallowed. In any case, legislative history of this credit shows that the provision preventing nonresidents from claiming the credit was retained in the law due to an oversight in 1981, when it should have been repealed.

The tax credit for child care expenses was formerly a deduction. On July 9, 1981, the General Assembly repealed the deduction and replaced it with a credit. At that time, nonresidents were not allowed to take income tax deductions that were not directly connected to their North Carolina income. Thus, in changing the deduction to a credit, the General Assembly retained the rule that nonresidents could not take advantage of the tax benefit. A few months later, however, the General Assembly abandoned its policy of disallowing nonresidents' deductions for expenses unrelated to North Carolina income and enacted a new law allowing a nonresident to take a proportional amount of these deductions. Through an oversight, the restriction that had been carried forward from the child care deduction to the child care credit was not similarly modified. Because this restriction remains in the law only because of an oversight, a court would be unlikely to find the required substantial reason for it to be upheld in a constitutional challenge.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1422 (First Edition)

SHORT TITLE: Make Credits Constitutional

SPONSOR(S): Representative C. Wilson, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Child Care Credit	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**
Handicapped Credit	**Minimal Impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Personal Taxes Division

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The act removes unconstitutional restrictions that prevent nonresidents from taking individual income tax credits for child care and for constructing dwellings for the handicapped.

ASSUMPTIONS AND METHODOLOGY:

Child Care Credit

The Tax Research Division of the Department of Revenue estimates that allowing nonresidents to claim a prorated child care credit will produce a General Fund revenue loss of $400,000 to $600,000 per year. Tax Research used a 1991 individual income tax database to derive this estimate. This note will assume the maximum revenue loss of $600,000 to account for growth in the cost of dependent care and in the number of eligible taxpayers since 1991.

Handicapped Dwellings Credit

The Tax Research Division in the Department of Revenue could not identify in its income tax database any potential credits for nonresidents who build handicapped dwellings. According to data compiled by the Building Accessibility Section in the Department of Insurance, there have been 63 handicapped accessible units built by nonresident companies since 1991 (none in 1996 and 1997). At $550 per unit, this equates to $34,650 or $4950 per tax year. Based on this experience in the 1990's, expanding the credit to nonresidents should have little or no impact on the General Fund.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 31, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/30/98
Fourth Edition Engrossed 7/9/98
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/22/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.
(4) 'Equine' means a horse, pony, mule, donkey, or hinny.
(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"§ 106-823. Referendum.

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.
(2) The period for which the assessment shall be levied, not to exceed three years.
(3) The time and place of the referendum.
(4) Procedures for conducting the referendum and counting votes.
(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"§ 106-824. Majority vote required; collection of assessment.

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum 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.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1529 (Second Edition)

SHORT TITLE: Horse Promotion Assessment

SPONSOR(S): Rep. Brown

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Horse Council Funds	$200,000	$200,000	$200,000		
EXPENDITURES	(to be determined by the Horse Council)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

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

BILL SUMMARY: The bill authorizes the North Carolina Horse Council to hold a referendum among horse owners on whether to levy a fee of up to $2 a ton on commercial horse feed for the purpose of promoting the horse industry. If approved by a majority of the horse owners, the Department of Agriculture and Consumer Services will collect the fee from commercial feed dealers and distributors and remit the funds to the Horse Council on a quarterly basis. The assessment will be levied for no more than three years. Horse owners have a right to request a refund of the fee from the Horse Council if they do not wish to participate in the promotion effort.

ASSUMPTIONS AND METHODOLOGY: In the 1996 North Carolina Equine Survey, the Department of Agriculture and Consumer Services identified 33,000 equine owners and 132,000 head of equine in the state. The Department 's 1996 Feed Tonnage Report showed 97,279 tons of horse feed were purchased in the state. Horse feed sales grew 8.7% a year from 1993 to 1996, but the growth rate was only 4.4% from 1995 to 1996. Without data on the projected growth in the state's equine herd, it is impossible to predict what the future growth in feed sales will be. This

note assumes a flat 100,000 tons of horse feed are purchased each year during the three years that the assessment is in place. If the referendum is successful, this note assumes the Horse Council will assess $2 per ton beginning in FY 1998-99 for revenues of $200,000 per year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 20, 1998

NORTH CAROLINA HORSE COUNCIL

P.O. Box 12999, Raleigh, North Carolina 27605-2999
919/821-1030 fax 919/828-9322

North Carolina HB 1529 - THE HORSE INDUSTRY PROMOTION BILL
August 1, 1998

This bill, if it passes the NC Legislature, will permit the horse owners of North Carolina **to vote amongest themselves** to determine if they are willing **to assess themselves** 5 cents per bag of horse feed they purchase for marketing their own horse interests. This calculates to about $1.80/horse/year. Passage of HB 1529 does not assess the money. Even if the assessment passes the Legislature and then the horse owners; an individual can get their own money back!

Is this something new?
No, most of the commodity groups of North Carolina have had a self-assessing system to send money to the NC Department of Agriculture which in turn is sent back to the commodity group's spokes organization to use for the industry as a whole. The money is used mostly in the area of marketing and education. The central organization that deals with all the common horse problems in North Carolina is the NC Horse Council. Presently we have the support of major feed companies like Purina, Southern States and Mule City Feeds. Commissioner Graham of the NCDA has been very supportive including having Mr. David McLeod help draft the bill. Major horse owner organizations like the NC Hunter/Jumper Association, NC Quarter Horse Association, Mid East Coast Arabian Association, Central Piedmont Arabian Association, and the Piedmont Hunter Jumper Association support HB-1529.

Who is the North Carolina Horse Council?
The North Carolina Horse Council was incorporated perpetually in 1972 "to encourage, promote, and develop all phases of the horse industry and all other agricultural interests including breeding, feeding, and disease control; to aid in the protection and care of horses; to facilitate the most practical application of all research pertaining to agricultural products especially as it pertains to production, sanitation, and marketing of horses; to inform and educate the general public in matters pertaining to horses; and to promote any shows, sales, exhibitions, and contests for the betterment of agriculture in North Carolina." Commisssioner Graham and the governors since 1972 have recognized that the NCHC is the "voice of the horse industry" of North Carolina. It is a state wide organization like most states have and is a "member" of the American Horse Council.

It is a Council, not an association. All meetings are open to the public. Currently there is a "membership fee" to help with office materials cost. This "fee" is paid by those individuals, organizations and businesses who feel that the concept of helping with issues that pertain to all horses is important. Currently the issues that are helpful to all horse owners are a series of educational seminars held annually with horse extension; the enactment of the Equine Liability Bill; this Bill, HB1529; monitoring equine disease; improving trails (this helps local communities with hiking and green space) and the promotion and providing horses to add to the success of the 1999 Special Olympics.

If HB 1529 passes the Legislature and then the horse owners, what would this money be used for?

The primary use for this money would be for communication to and for the horse industry. The Horse Council would continue to develop lists of all the horse owners, horse organizations and businesses in the state to get them current, beneficial information. This list management would be used to get information to and process information from all horse owners and groups. The Horse Council then would be able to go to the Legislature for needs, help inform the various educational institutions the needs of the horse owners, and develop programs for the general public to help inform them about issues related to the horse. This emphasis on communication could be state wide, regions of the state or on the local level, such as in planning commissions.

The money would also be used to continue and improve the NCHC's role in education of the horse owners and the public as it has done since its inception in 1972. Be able to participate more fully in "facilitating the most practical application of all research pertaining to agricultural products especially as it pertains to production, sanitation, and marketing of horses" ***The aims always of the North Carolina Horse Council and this money, would be for all horse owners; competition, trail and purely pleasure horses; not just one specific group or one project!***

The money is paid to and distributed by the NC Department of Agriculture and Consumer Affairs.

If the Bill passes the Legislature, what next?

HB 1529 has past the NC House and the Senate Agricultural Committee. Currently it is being debated in front of the NC Senate Finance Committee. It still will have to pass this Committee, and a vote in front of the entire Senate. Then the horse owners can vote on the proposal. The voting of the horse owners will be at their county extension offices no sooner than two months after the Governor would sign the Bill into Law. The date will be announced through various horse-related and general media. If a horse owner is opposed to the concept of this type of help for horse owners, that individual can vote against the assessment then. Even if the assessment would pass the NC horse owners's vote, an individual owner can request their own money back.

Why would a feed company or horse owners want to participate favorably in this program?

It is obvious why a feed company would favor this program. A healthier horse industry makes them more profit. They then can produce a better product for horses (and their owners). Yes, there is a small amount of paper work added to their already marked demands of quarterly reporting to the NCDA&CA, but this can also be considered a "payback" to an important group of their customers.

Feed store owners will not be affected at all by any increased costs or paper work. Since this program doesn't cost store owners, supporting this Bill thus showing horse owners who buy plenty of other items than feed for their dogs and horses, would be a good business tactic for the feed store (and feed company).

For horse owners, yes, they will have to pay about $1.80/horse/year. But they will get a Horse Council staff that will be able to create continuity in dealing with common horse issues. Since its beginning without sufficient funding and relying primarily only on volunteer help, the NC Horse Council has had lots of ups and downs. With each issue the volunteers had to reinvent the wheel. (For example it took close to 10 years to get an Equine Liability Law in North Carolina - 38th in the nation.) The number of horses is growing; therefore more issues. And therefore, there is more need of a continuity of NCHC staffing, list management, education, marketing and contact with NC horse owners.

HORSES NEED PEOPLE!

NORTH CAROLINA HORSE COUNCIL

F. Carlyle Teague, Executive Director
P.O. Box 12999 Raleigh, North Carolina 27605-2999 tel: 919/821-1030 fax: 919/828-9322

HB 1529 - HORSE INDUSTRY PROMOTION BILL

Passage of HB 1529 would give the horse owners of North Carolina ***the option to vote amongest themselves*** whether they would assess themselves money from purchasing horse feed for marketing, education and research of the horse industry of North Carolina through expansion of existing and development of new programs. This concept of a product assessment is the basic marketing and educational funding of many other livestock and agricultural commodity groups in North Carolina.

This money would be used to benefit the North Carolina horse industry:

1) for the production of marketing, informational and educational materials and programs;

2) to encourage development and growth of the horse industry through attraction of new owners, relocation of out-of-state horse operations and expansion of new and exisiting equine-related agribusiness;

3) to encourage research that would help the development of the horse industry;

4) to improve interaction with North Carolina governmental agencies and any national agencies deemed necessary for the improvement of the North Carolina horse industry;

5) and to enhance the general public's image and knowledge of the North Carolina horse industry.

THE SPECIFICS OF THE BILL

*** Once the Bill is passed by the NC Legislature, the assessment would need to have the approval of the North Carolina horse owners through a referendum.

*** It would be an assessment of $2.00/per ton of any commercial feed labelled for horse use or horse supplements (a nickel per 50 # bag of horse feed). This would amount to approximately $1.80 per horse per year. This concept has the approval of the major horse feed companies, independent feed mill operators, horse organizations and the Department of Agriculture and Consumer Affairs of the state of North Carolina.

*** Horse owners who buy feed; but do not wish to contribute, can request and gain a refund of their money.

Support letters from the following are on file with our sponsor, Representative John Brown: Commissioner Jim Graham, Mule City Feeds, Southern States Cooperative, Inc, Purina Mills, Inc, Cooperative Council of North Carolina, Mid-East Coast Arabian Association, Piedmont Hunter Jumper Association, Inc, North Carolina Hunter Jumper Association, Central Piedmont Arabian Horse Assoication, North Carolina Quarter Horse Association (July 16, 1998)

JAMES A. GRAHAM
COMMISSIONER

State of North Carolina
Department of Agriculture
Raleigh

April 29, 1998

Dr. Richard A. Mansmann, President
North Carolina Horse Council
P.O. Box 12999
Raleigh, North Carolina 27605-2999

Re: Horse Industry Promotion Assessment

Dear Dr. Mansmann:

The Department of Agriculture and Consumer Services supports the efforts of the North Carolina Horse Council to enact a horse promotion assessment.

This legislation would provide for an assessment of up to $2 per ton on commercial horse feed, if approved in a referendum among horse owners. The assessment would be collected by the Department of Agriculture and Consumer Services from all feed manufacturers who sell horse feed in North Carolina. I understand that there is support for this proposal among feed manufacturers due to the mutual benefits to be derived from promotion and expansion of our horse industry. I am not aware of any opposition to this legislation.

We are pleased to work with the North Carolina Horse Council in this effort, and I hope you will feel free to share this letter with members of the General Assembly and other interested parties.

With all good wishes.

Sincerely,

James A. Graham
Commissioner of Agriculture

JAG:jm
hopromas.com

WAYNE FEEDS

WAYNE ANIMAL HEALTH AIDS

MULE CITY SPECIALTY FEEDS, INC.
1202 NORTH WALL STREET
BENSON, N.C. 27504-2010
PHONE: 919-894-3626
PHONE: 800-587-9229

April 22, 1998

To Whom It May Concern:

Representatives of the horse feed manufacturers agree with the **Horse Industry Promotion Bill** as presented to the 1998 North Carolina Legislature.

We see the need to promote the horse industry in our state, and this act will serve all parties involved.

Please feel free to contact me if you have any concerns or questions about this bill.

Sincerely,

Paul G Dunn, President
Mule City Specialty Feeds, Inc.

Southern States Cooperative, Inc.
6606 West Broad Street
Richmond, Virginia 23230-1717
Mail Address: P.O. Box 26234
Richmond, Virginia 23260-6234
Telephone (804) 281-1000

SOUTHERN STATES

May 6, 1998

Dr. Richard A. Mansmann
Central Carolina Equine Practice
P.O. Box 1575
Apex, NC 27502-3575

Dear Dr. Mansmann:

Southern States Cooperative supports passage of the "Horse Industry Promotion Act" by the General Assembly of North Carolina. We believe that the funds generated by the assessment, while only nominally affecting horse owners, will provide long-term benefits to the equine industry.

We do believe that it is important for the law and regulations to be drawn in such a way as not to burden the sellers of equine feed with added paperwork, to apply equally to all sellers, and to minimize the possibility of the checkoff's being skirted by sellers or purchasers who would purchase feed for their horses under the guise of feeding it to other species.

Sincerely,

Jerry H. Gass
Director, Corporate Communications
and Government Affairs

JG:ab

cc: Mr. F. Carlyle Teague
Dr. Kenneth Kopp
Mr. Richard Schneider
Mr. David Teague

Southern States Cooperative 1923-1998 75 KNOWLEDGE. SERVICE. SOLUTIONS.

Purina Mills, Inc.

May 29, 1998

To Whom It May Concern

Purina Mills, Inc. is in support of the North Carolina Horse Council's effort to raise funds to promote and support the horse industry in the State of North Carolina. The proposed assessment to be paid on horse feed at $2.00 per ton equates to $1.80 - $2.00 per horse per year.

The funds will be used to promote the horse industry in the State of North Carolina and one of the goals of the Horse Council is to increase the amount of trails available to the horse owner to use on a recreational basis. We at Purina feel the $2.00 per ton assessment is a small investment by the horse owner to insure the long term success of the horse industry.

Sincerely

Jim Brazell
General Manager

ss

173 McNess Road
Statesville, NC 28677

Cooperative Council of North Carolina
P.O. Box 10426
Raleigh, N.C. 27605

F. Carlyle Teague
President

May 27, 1998

To Members of the General Assembly

RE: House Bill 1529
Horse Promotion Assessment

The purpose of this letter is to request support for the legistation which has been introduced to provide promotion funds for the North Carolina Horse Industry. The Cooperative Council of North Carolina has considered carefully the status of the equine industry of the state and recognizes the intense need for a self-funded program for promotion and research for the industry.

The membership of the Council's last annual meeting approved a policy supporting this legislation. The legislation reflects the efforts of a hard-working committee which was charged with the responsibility of proposing a structure to provide the needed funds.

The Cooperative Council agrees with the committee that an assessment to be paid by the buyers of horse feed is an easy, effective solution.

We urge the General Assembly to pass the proposed legislation which will give the horse owners of North Carolina the right to vote whether or not they want this self-assessment.

Sincerely,

F. Carlyle Teague
President

FCT/bh

NCHJA

P.O. BOX 33790
RALEIGH, NC 27636

To Whom It May Concern:

The North Carolina Hunter Jumper Association with approximately 600 members in North Carolina supports HB 1529 - The Horse Industry Promotion Bill. Our organization is a family organization primarily interested in showing horses. However, we are also interested in cooperating with the North Carolina Horse Council marketing North Carolina to help develop new horse farms. We sanction over 80 horse shows per year in North Carolina, bringing many visitors who spend money for food, lodging and and other tourism related expenditures in the communities that host those shows.

We are very grateful to the NC Horse Council and the NC General Assembly for getting us liability help through the passage of the Equine Activity Liability Act last year.

This is an important economic industry and should have the benefits similar to the other agricultural commodity groups in North Carolina.

Sincerely,

Andrew Ellis
President
NC Hunter Jumper Association

PIEDMONT HUNTER JUMPER ASSOCIATION, INC.
229 N. Canterbury Road
Charlotte, NC 28211
(704) 365-9475

June 16, 1998

In Support of HB 1529 - Horse Industry Promotion

To Whom It May Concern:

Piedmont Hunter Jumper Association, Inc. is a non-profit equestrian organization with over 100 individual and family members, the vast majority of whom are horse owners. PHJA is an organization dedicated to promoting sportsmanship and education of children and adult riders. PHJA provides governance and incentives for high-quality, moderately-priced horse shows and educational opportunities in the Piedmont region, accessible geographically and financially to competitors at all levels.

This letter is to request your support of HB 1529 - the Horse Industry Promotion Bill, which passed the NC House Agricultural Committee unanimously on June 2nd. As horse owners, the members of PHJA are all too familiar with the difficult issues facing not just our organization, but the horse industry as a whole. Richard A. Mansmann, VMD, PhD, and co-chair of the North Carolina Horse Council Legislative Committee has described these issues very well in a separate letter, which PHJA has reviewed and supports.

Bill 1529 is asking the Legislature to allow horse owners throughout the state to vote to assess ourselves money through feed company cooperation to work at solving these common problems. Many North Carolina commodity groups have this type of self-assessment to help promote their industries. The costs of the program would fall to horse owners (many of whom we represent), not the public in general. Furthermore, a horse owner somehow opposed to the program would have the opportunity to receive a refund of his assessment. Strengthening the base of this growing agricultural and tourist-attracting industry, and allowing it to flourish, will be a benefit to the entire tax base of the State. As such, this Bill presents a win-win opportunity for the State of North Carolina.

There are wonderful opportunities for competition, trail riding, green belt and farm development within North Carolina! We hope you think as positively about this bill (Bill 1529 - Horse Industry Promotion) as we do, and will help it to be enacted into law as soon as possible.

Please do not hesitate to call if you have any questions or would like further information regarding the perspective of PHJA and its members.

Sincerely,

Sarah L.

Sarah A. Linn
Treasurer
Piedmont Hunter Jumper Association, Inc.

cc: Kathy Forbes, President of PHJA

From: Daniel G. Regan, President,
Central Piedmont Arabian Horse Association

To: Whom It May Concern

Date: 6/23/98

Subject: HB 1529 - HORSE INDUSTRY PROMOTION BILL

The entire 142 adult membership of Central Piedmont AHA is behind this bill.

The goal of the Horse Industry Promotion Bill will be for the horse industry itself to annually contribute funds dedicated to the marketing, education and research of the horse industry of North Carolina through expansion of existing and development of new programs.

This money would be used to benefit the North Carolina horse industry:

1) for the production of marketing, informational and educational materials and programs;

2) to encourage development and growth of the horse industry through attraction of new owners, relocation of out-of-state horse operations and expansion of new and existing equine-related agribusiness;

3) to encourage research that would help the development of the horse industry;

4) to improve interaction with North Carolina governmental agencies and any national agencies deemed necessary for the improvement of the North Carolina horse industry;

5) and to enhance the general publics image and knowledge of the North Carolina horse industry.

For these reason I urge you to support HB 1529 - The Horse Industry Promotion Bill.

Best Regards,

Daniel G. Regan
President
CPAHA

Daniel G. Regan
2557 Morrocroft Lane
Charlotte, NC 28211

The North Carolina Quarter Horse Association

RECEIVED JUL 2 2 1998

4742 SPRINGS ROAD
CONOVER,N.C. 28613
JULY 16,1998

NORTH CAROLINA HORSE COUNCIL
ATT: F. CARLYLE TEAGUE, EXECUTIVE DIRECTOR
P.O.BOX 12999
RALEIGH,N.C. 27605-2999

DEAR MR. TEAGUE,

ON BEHALF OF THE NORTH CAROLINA QUARTER HORSE ASSOCIATION AND THEIR 1200+ MEMBERS WE WOULD LIKE TO GO ON RECORD IN FAVOR OF THE HORSE INDUSTRY PROMOTION BILL.

WE, AS AN ORGANIZATION, WOULD LIKE TO HELP IN ANY WAY THAT WE CAN AND LOOK FORWARD TO HEARING THE RESULTS ONCE THIS IS PASSED BY THE N.C. LEGISLATURE.

YOU MAY REACH ME AT THE ABOVE ADDRESS OR 828-256-5037 (PHONE OR FAX).

SINCERELY,

Rebecca H. Poe

REBECCA H. POE
SECRETARY, NCQHA

To: Dick Mansmann 7/24/98

1996 North Carolina Equine Survey

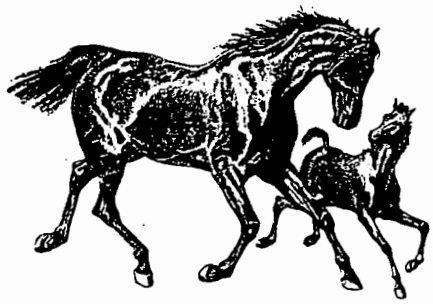
NORTH CAROLINA Agricultural Statistics
P.O. Box 27767
Raleigh, N.C. 27611
Phone (919) 856-4394

Released: March 27, 1997

E-mail: agstat@NCDAMAIL.agr.state.nc.us

Introduction

The 1996 North Carolina Equine Survey was designed to determine equine inventory as well as the industry's economic contribution to the State. The results of the survey were compiled from the voluntary and confidential responses of thousands of equine owners across the State. The summarized data will be used by the equine industry, agricultural businesses, government and other interested parties to better serve the North Carolina equine industry.



The survey was conducted in two phases, with the first phase concentrating on inventory and the value of equine. The second phase, beginning in March of 1997, will examine other economic issues such as the value of equipment, cost of owning horses, and purchases made by equine owners.

To conduct the survey, a list of equine owners was constructed from all available sources to provide a good cross section of the industry. Breeding associations, veterinarians, Extension Service, riding clubs and other sources were asked to provide names of equine owners. The lists were merged and duplication removed prior to mailing the questionnaire. Because it was impossible to develop a complete list of equine owners, an "area frame sample" was used to measure and account for the list's incompleteness. The area sample consisted of 362 areas of land called segments that average about one square mile in size. Equine found in a segment that were not covered on the list were expanded to represent equine on similar segments across the state. The list and area data were combined to account for all equine in North Carolina.

Number of Equine Operations, by Size

OPERATION SIZE (HEAD)	NUMBER OF OPERATIONS	AVERAGE PER OPERATION
1 - 2	10,800	1.6
3 - 5	9,600	3.7
6 - 10	3,500	7.4
11 - 24	1,800	15.3
25 +	600	42.7
TOTAL	**26,300**	**5.0**

Summary

The 1996 North Carolina Equine Survey accounted for 132,000 head of equine in the state. Equine were found on 26,300 places with an average of five horses per operation. Land associated with equine operations, totaled 446,000 acres, and averaged 17 acres per operation. The survey identified 33,000 equine owners in North Carolina, 6,700 which do not stable horses on their own property. Owners reported an average of 4 horses per owner.

Light horse breeds, at 105,400 head, dominate North Carolina's equine inventory, accounting for 80 percent of the equine in the state. Race horse inventory, at 10,400 head, was a distant second and comprise 8 percent of the total. The remainder of the inventory includes Ponies, 5 percent; Warmbloods, 3 percent; Draft horses, 2 percent; and Donkeys and Mules at 1 percent each. The American Quarter Horse is the most commonly owned light breed, totaling 45,100 head. Other light breeds include the Tennessee Walking Horse, 11,200 head; Arabian, 10,100 head; Appaloosa, 8,600 head; American Paint, 6,700 head and American Saddlebred at 4,300 head.

The value of total equine in North Carolina is estimated at $533 million dollars. Light horse breeds, valued at $383 million, account for 72 percent of the total. Race horses are valued at $80.1 million; Warmbloods, $48 million; Ponies, 11.1 million; Draft horses, $7.8 million; Mules, $1.7 million and Donkeys, $910 thousand. The value owners placed on their equine ranged from $50 to over $500,000 per animal. The average value per animal was $4,038.

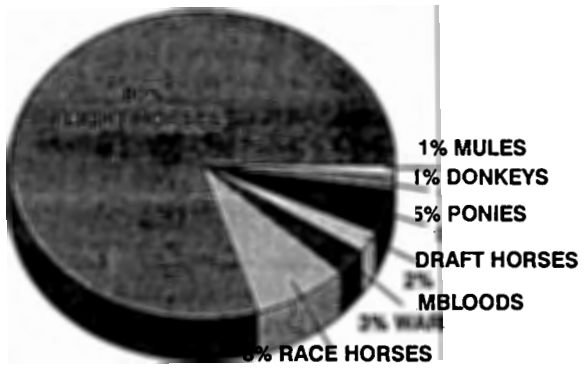
The average age of an equine owner was 44 years, with nearly 70 percent of the owners falling between the ages of 36 and 65. Nearly 83 percent of equine owners have been involved with equine for over 5 years.

Equine Inventory and Value by Breed

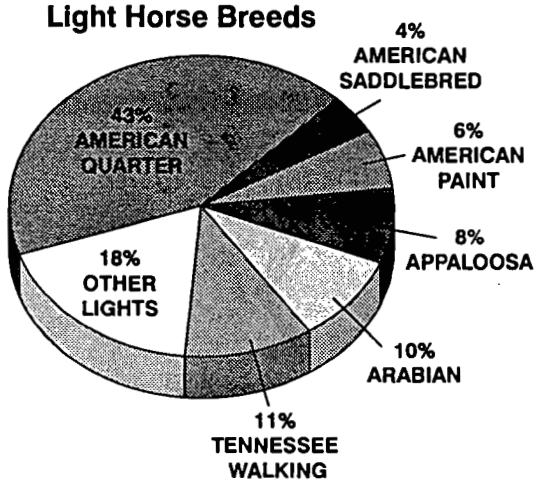
BREED	INVENTORY	AVERAGE VALUE	TOTAL VALUE
American Quarter Horse	45,100	$3,387	$152,740,000
Tennessee Walking Horse	11,200	$3,365	$37,685,000
Arabian	10,100	$4,792	$48,400,000
Appaloosa	8,600	$2,344	$20,160,000
American Paint	6,700	$3,502	$23,466,000
American Saddlebred	4,300	$9,109	$39,167,000
Miniature Horse	2,700	$2,200	$5,940,000
Half-Arabian	2,600	$2,885	$7,502,000
Morgan	2,500	$4,186	$10,465,000
Palomino	1,300	$3,240	$4,212,000
Pinto	500	$2,270	$1,135,000
Other Light Horses [1]	9,800	$3,282	$32,163,000
Light Horse Breeds	**105,400**	**$3,634**	**$383,035,000**
Thoroughbred	9,300	$8,285	$77,050,000
Standardbred	1,100	$2,805	$3,085,000
Race Horse Breeds	**10,400**	**$7,705**	**$80,135,000**
Hanoverian	1,500		
Trakehner	500		
Other Warmbloods [1]	1,800		
Warmbloods	**3,800**	**$12,707**	**$48,285,000**
Belgian	1,600		
Percheron	800		
Clydesdale	100		
Other Draft Horses [1]	500		
Draft Horses	**3,000**	**$2,600**	**$7,800,000**
American Shetland	1,500		
Welsh	1,500		
Hackney Pony	700		
Other Ponies [1]	2,500		
Total Ponies	**6,200**	**$1,796**	**$11,135,000**
Mules	**1,700**	**$1,000**	**$1,700,000**
Donkeys	**1,500**	**$607**	**$910,000**
TOTAL EQUINE	**132,000**	**$4,038**	**$533,000,000**

[1] *All other types or equine not identified by owner.*

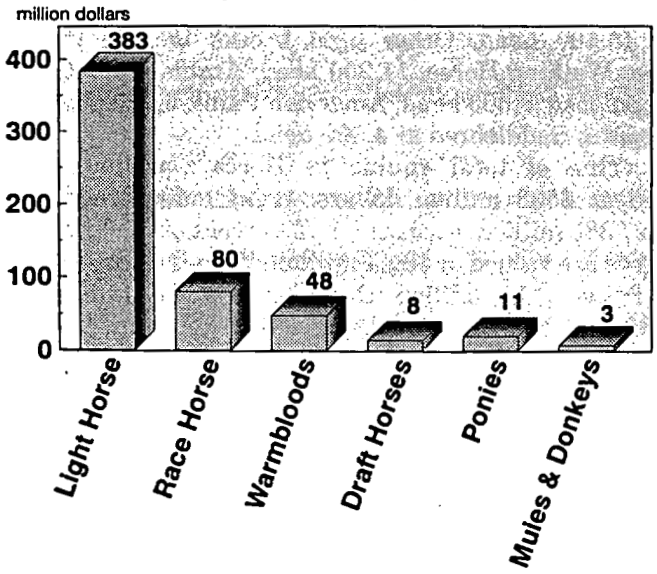
INVENTORY
All Horse Breeds



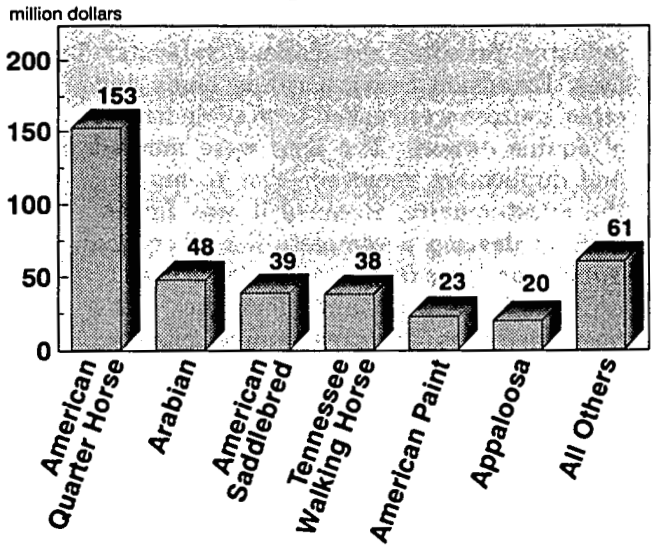
INVENTORY
Light Horse Breeds



Equine Value by Breed



Value of Light Horses, by Type



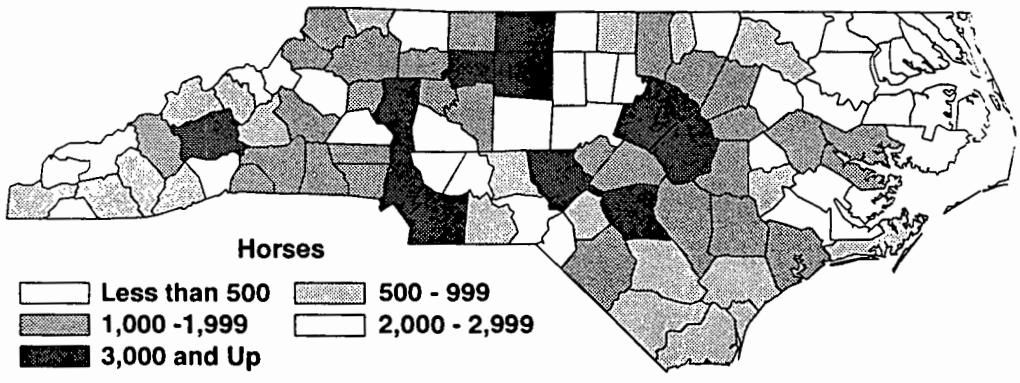
Equine Inventory and Value by County

COUNTY	TOTAL EQUINE	INVENTORY VALUE	COUNTY	TOTAL EQUINE	INVENTORY VALUE
		(Dollars)			(Dollars)
Alamance	2,400	$8,918,000	Johnston	3,000	$8,067,000
Alexander	1,350	$3,108,000	Jones	300	$603,000
Alleghany	700	$963,000	Lee	1,100	$3,022,000
Anson	600	$1,594,000	Lenoir	700	$1,338,000
Ashe	1,700	$3,932,000	Lincoln	1,600	$8,171,000
Avery	350	$615,000	McDowell	800	$2,224,000
Beaufort	1,000	$2,642,000	Macon	780	$3,455,000
Bertie	300	$611,000	Madison	560	$869,000
Bladen	690	$2,459,000	Martin	160	$356,000
Brunswick	500	$1,036,000	Mecklenburg	4,400	$23,790,000
Buncombe	3,000	$11,995,000	Mitchell	420	$610,000
Burke	1,400	$3,329,000	Montgomery	800	$1,406,000
Cabarrus	2,200	$26,499,000	Moore	3,100	$21,006,000
Caldwell	2,200	$4,408,000	Nash	1,100	$3,513,000
Camden	110	$447,000	New Hanover	600	$2,397,000
Carteret	520	$1,525,000	Northampton	220	$583,000
Caswell	350	$634,000	Onslow	1,400	$6,130,000
Catawba	2,100	$8,679,000	Orange	2,700	$14,094,000
Chatham	2,200	$10,646,000	Pamlico	110	$256,000
Cherokee	800	$2,364,000	Pasquotank	290	$655,000
Chowan	400	$826,000	Pender	850	$1,915,000
Clay	270	$326,000	Perquimans	220	$333,000
Cleveland	1,900	$6,195,000	Person	730	$1,910,000
Columbus	790	$1,938,000	Pitt	1,500	$7,822,000
Craven	400	$1,103,000	Polk	1,500	$11,008,000
Cumberland	3,000	$9,344,000	Randolph	2,400	$7,382,000
Currituck	300	$1,132,000	Richmond	400	$1,193,000
Dare	120	$222,000	Robeson	1,600	$20,285,000
Davidson	1,600	$4,981,000	Rockingham	3,700	$24,452,000
Davie	1,900	$5,084,000	Rowan	2,500	$8,015,000
Duplin	1,000	$2,628,000	Rutherford	1,900	$4,887,000
Durham	2,300	$11,995,000	Sampson	1,100	$2,409,000
Edgecombe	350	$915,000	Scotland	200	$688,000
Forsyth	3,600	$16,417,000	Stanly	2,400	$6,589,000
Franklin	1,900	$7,973,000	Stokes	1,400	$4,330,000
Gaston	1,500	$6,123,000	Surry	2,300	$9,569,000
Gates	350	$842,000	Swain	180	$235,000
Graham	130	$330,000	Transylvania	950	$1,543,000
Granville	1,500	$5,362,000	Tyrrell	110	$127,000
Greene	360	$1,043,000	Union	4,600	$14,223,000
Guilford	5,600	$31,851,000	Vance	680	$1,344,000
Halifax	800	$2,013,000	Wake	4,100	$21,711,000
Harnett	1,400	$5,202,000	Warren	270	$670,000
Haywood	1,300	$2,489,000	Washington	210	$266,000
Henderson	2,100	$9,569,000	Watauga	1,700	$7,806,000
Hertford	200	$309,000	Wayne	1,400	$3,882,000
Hoke	950	$6,344,000	Wilkes	1,600	$4,005,000
Hyde	30	$39,000	Wilson	1,000	$2,356,000
Iredell	3,100	$12,853,000	Yadkin	1,300	$2,940,000
Jackson	540	$1,265,000	Yancey	900	$3,443,000
			TOTAL EQUINE	132,000	$533,000,000

Top 11 Equine Counties

COUNTY	NUMBER
Guilford	5,600
Union	4,600
Mecklenburg	4,400
Wake	4,100
Rockingham	3,700
Forsyth	3,600
Iredell	3,100
Moore	3,100
Buncombe	3,000
Cumberland	3,000
Johnston	3,000

Equine Inventory, 1996



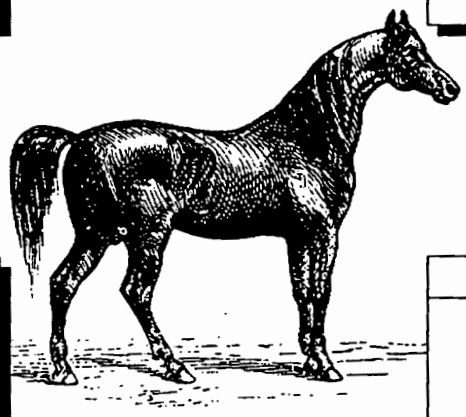
1996 Demographics of North Carolina Equine Owners

EDUCATIONAL LEVEL

Education	% of Total
< High School	6.1%
High School	24.4%
Some College	22.3%
2-Year College	13.8%
4-Year College	20.9%
Advanced	12.5%

AVERAGE AGE

Age	% of Total
< 14	0.7%
14 - 18	2.5%
19 - 35	21.0%
36 - 65	69.5%
65 +	6.3%



YEARS INVOLVED WITH EQUINE

Years	% of Total
1 - 2	4.9%
3 - 5	12.3%
6 - 10	19.7%
11 - 20	27.2%
> 20	35.9%

YEARS OWNED EQUINE

Years	% of Total
1 - 2	9.8%
3 - 5	18.0%
6 - 10	22.5%
11 - 20	24.8%
> 20	24.9%

14,000 copies of this public document were printed at a cost of $591.38 or $ .04 per copy.

Craig Hayes
Agricultural Statistician

Bob Murphy
State Statistician

James A. Graham
Commissioner

U. S. Department of Agriculture / N. C. Department of Agriculture
Internet Address: http://www.agr.state.nc.us/stats

9,906

NORTH CAROLINA
AGRICULTURAL
STATISTICS

P.O. BOX 27767
RALEIGH, N.C. 27611
PHONE 919- 856-4394

BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 883
RALEIGH, N.C. 2761

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1546
Committee Substitute Favorable 7/2/98
Committee Substitute #2 Favorable 7/15/98

Short Title: Greenville Fees/Weedy Lots. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CHARGE A FEE NOT TO EXCEED TEN DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE CITY TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may charge a fee not to exceed ten dollars ($10.00) for an uncertified copy of a police incident or accident report, except that a representative of a newspaper, wire service, radio station, or television station shall not be charged a fee that exceeds the municipality's actual cost of making the uncertified copy and the operator of a vehicle involved in an accident shall be entitled to one free copy of an uncertified copy. The fees collected shall be used for law enforcement purposes only.

Section 2. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous

calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 3. This act applies to the Towns of Denton and Farmville and the City of Greenville only.

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

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1546 3rd Ed DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Wellons
Sen.)

moves to amend the bill on page 1, line 12 - 13

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"uncertified copy. The fees collected shall be used for"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1546 CS #2

SHORT TITLE: Greenville Fees/Weedy Lots

SPONSOR(S): Rep. Tolson

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
	NO GENERAL FUND IMPACT				
Greenville	$75,000	$75,000	$75,000	$75,000	$75,000
Denton	0	0	0	0	0
Farmville	0	0	0	0	0
EXPENDITURES					
	NO GENERAL FUND IMPACT				
	Some reduction in postal expenditures by listed municipalities.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Denton and Farmville, and the City of Greenville.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: This bill applies to the Towns of Denton and Farmville, and the City of Greenville. The bill has two parts. First, the bill authorizes the listed municipalities to charge a ten dollar ($ 10.00) fee for an uncertified copy of police incident or accident report. The operator of a vehicle involved in an accident is entitled to one free uncertified copy of the report. Representatives of the media pay the municipalities' cost of making the copy, and not the $10.00 listed above. The fees provide additional law enforcement funding. The second part of the bill addresses overgrown lots. The bill authorizes Greenville, Farmville, and Denton to notify the owner of a chronically overgrown lot of the municipality's overgrown vegetation ordinance. The bill authorizes the municipality to "remedy" the violation, (mow, etc.) once the owner is notified and again found in violation. The cost associated with mowing become the equalivent of a tax

lien against the property. Under the bill, notice must be given at least once during the calendar year. The bill defines a chronic violator as a person who owns property sited at least three times during the previous calendar year for overgrown vegetation.

ASSUMPTIONS AND METHODOLOGY:

Greenville: According to the City Attorney, Greenville receives approximately 10,000 requests per year for uncertified accident reports. This number does not include those requested by the media. Of the 10,000 requests, approximately 25% are from vehicle owners, and are not covered by the bill. As such, the bill impacts approximately 7,500 requests. Assuming the city charges the maximum fee of $10.00 on each request, the total potential revenue to the city is $75,000 (7,500 requests x $10 each) . The City Attorney believes most the 7,500 requests are from attorneys following up on claims, and insurance adjusters. This note assumes the number of requests remains constant over time. The city believes the fiscal impact of the weedy lot portion of the bill is minimal. The only expected savings to the city is the cost of certified postage. (Under current law the city must notify the owner each time there is a violation.) They believe the primary impact of this portion of the bill is procedural.

Denton: According to the Denton Town Manager, the town's primary interest in the bill is the weedy lot provision. They believe the town will see some decrease in their postal expenses as a result of this provision. However, they expect the fiscal impact to be minimal. The town of Denton currently charges $2.00 for an accident report. They now receive approximately 100 requests for accident reports. It is the town's intention to continue to charge a $2.00 fee.

Farmville: This community's primary interest is also in the weedy lot portion of the bill. The Town Manager estimates that the weedy lot provision will save the community less than $100 a year in postage. The change is primarily procedural. The Town Manager believes the community will continue to charge the current $1.00 fee for uncertified copies of accident reports. As a result, no significant fiscal impact is expected.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: August 3, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1309
Committee Substitute Favorable 7/15/98
Committee Substitute #2 Favorable 7/28/98

Short Title: Banner Elk Annexations. (Local)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW BANNER ELK TO VOLUNTARILY ANNEX CERTAIN PROPERTY LOCATED WITHIN ITS EXTRATERRITORIAL PLANNING JURISDICTION EVEN THOUGH IT IS CLOSER TO THE VILLAGE OF SUGAR MOUNTAIN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) does not apply to the Town of Banner Elk when the area proposed for annexation is closer to the Village of Sugar Mountain if the area proposed for annexation is within the extraterritorial jurisdiction of the Town of Banner Elk, as said extraterritorial jurisdiction exists on the date this act became law, under Article 19 of Chapter 160A of the General Statutes.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

AUGUST 4, 1998 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDA&CS
Dick Hartmann	NC Horse Council
Bruce Hancock	EGHS
Willie Riddick	DOR
Jane O. Gray	DOJ
Ed Rega	N.C.A.C.C.
Jim Blackburn	"
John Rust	NCFPC
Ann Case	NCRMA
Leslie Beacon	NCCRT
Andy Romanet	N.C.L.M.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **AUGUST 4, 1998**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B E Scarboro	VC Hare Carnal
Cam Cover	BPMHL
D J Rog	NCDOT
Amy Fullbright	Hunton & Williams
David Simmons	ZDA, PA
John Bowdish	Zeb Alley PA.
John E Marshall	Mayor of Statesville
Tom Rudd	Citizen
NANCY POMERANZ	Dpt of Revenue
	UNCSA
Crissy Parker	Bone & Associates

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

AUGUST 4, 1998 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patti Flowell	DOR
Sabra Faires	Dept. of Revenue
Jordan Deer	✓
Steve Jernigan	Agric. Alliance of N. C.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, August 04, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)**1309** Banner Elk Annexations.
Sequential Referral: None
Recommended Referral: None

H.B. **1422** Make Credits Constitutional.
Sequential Referral: None
Recommended Referral: None

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

H.B. **1367** Sales Tax Changes.
Draft Number: PCS3167
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2 ,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS#2)**1568** St. Pauls Occupancy Tax.
Draft Number: PCSXI603
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: Aug 4 HB 1309 1367 1422 1568

AGENDA

SENATE FINANCE MEETING

WEDNESDAY, 8-05-98

ROOM 544 LOB

Opening of Meeting - Senator David Hoyle, Presiding

Introduction of Pages

BILLS TO BE CONSIDERED:

- **SB 1571 - Regulate Ticket Broker's Fee - Sen. Hoyle**
- **HB 1369 - Comm. Colleges' Lease Purchase - Rep. Rayfield**
- **HB 1529 - Horse Promotion Assessment - Rep. Brown**
- **HB 1546 - Greenville Fees - Weedy Lots - Rep. Tolson**
- **HB 1579 - Montgomery Delinquent Utility Bill - Rep. Hightown**

Adjournment of Meetin

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 5, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, August 5, 1998 at 12:00 Noon in Room 544 LOB. There were 23 Members of the Committee present. Senator David Hoyle, Co-chairman, called the Meeting to order and introduced the Pages, they were: Conor Reeves Guthrie from the State of Oklahoma, sponsored by Senator Eric Reeves and Brad Bynum from Apex, North Carolina, sponsored by Senator John Blust.

H. B. 1579 - Montgomery Delinquent Utility Bill

Senator William Purcell cam to explain the bill. After numerous comments and questions on the bill. Senator Purcell asked that the bill be displaced.

H. B. 1546 - Greenville Fees-Weedy Lots

Representative Tolson came to explain the bill. Mr. Dave Hovlick, City Attorney from Greensville, North Carolina came to speak on the bill After numerous questions on the bill, Senator Hoyle stated that the bill would be carried over to the next day's meeting.

H. B. 1529 - Horse Promotion Assessment

Senator Hoyle announced that this bill would be put into a subcommittee. Mr. Tom Grubb, Private Horse Owner, spoke on the bill. There were several questions from members of the committee of Mr. Grubb. Mr. Phil Blalock, Feed Dealer, spoke in support of the bill. Mr. Dick Mason, immediate past President of the Horsemen Association, spoke in support of the bill. Senator Hoyle appointed the following members of the committee to a subcommittee on the bill: Senator Albertson, Chairman, Senators Weinstein, Webster and Dalton.

H. B. 1369 - Comm. Colleges' Lease Purchase

Senator Hoyle explained the bill. Senator Dannelly moved for a "favorable" report, motion passed. (Copy of Bill and Explanation are included in Minutes)

S. B. 1571 - Regulate Ticket Broker's Fee

Senator Hoyle came to ask that this proposed committee bill be given a "favorable" report and be referred to Senate Rules Committee to be put into a study committee and made a motion to this effect, motion passed. (Copy of Bill, Proposed Committee Substitute Bill, Explanation and Fiscal Note of PCS and copy of Study Bill are included in the Minutes)

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report is Attachment #2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1369*
Committee Substitute Favorable 6/3/98
Third Edition Engrossed 7/29/98

Short Title: Comm. Colleges' Lease Purchase Authority. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY COMMUNITY COLLEGES' AUTHORITY TO ENTER INTO LEASE PURCHASE AND INSTALLMENT PURCHASE CONTRACTS FOR EQUIPMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-20 is amended by adding a new subdivision to read:

"(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.15."

Section 2. Article 4A of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-58.15. Lease purchase and installment purchase contracts for equipment.**

(a) Authority. -- The board of trustees of a community college may use lease purchase or installment purchase contracts to purchase or finance the purchase of equipment as provided in this section.

(b) Contract Approval. -- Contracts for more than one hundred thousand dollars ($100,000) or for a term of more than three years shall be subject to review and approval as provided in this subsection. If the source of funds for payment of the obligation by the community college is intended to be local funds, the contract must be approved by resolution of the tax-levying authority, and the authority must acknowledge in writing its understanding that the community college may require appropriations from the tax-levying authority in order to meet the college's

obligations under the contract. The tax-levying authority may in each fiscal year appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the contract. If the source of funds for payment of the obligation by the community college is intended to be State funds, the contract must be approved by resolution of the State Board of Community Colleges. The State Board may in each fiscal year allocate sufficient funds to meet the amounts to be paid during the fiscal year under the contract.

(c) Local Government Commission. -- A contract that is subject to approval by the tax-levying authority also shall be subject to approval by the Local Government Commission as provided in Article 8 of Chapter 159 of the General Statutes if the contract:

(1) Extends for five or more years from the date of the contract;

(2) Obligates the board of trustees to pay sums of money to another, regardless of whether the payee is a party to the contract; and

(3) Obligates the board of trustees to pay five hundred thousand dollars ($500,000) or more over the full term of the contract.

(d) Application of Section. -- When determining whether a contract is subject to approval under this section the total cost of exercising an option to upgrade property shall be taken into consideration. The term of a contract shall include periods that may be added to the original term through the exercise of an option to renew or extend.

(e) Nonsubstitution Clause. -- No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a board of trustees to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any property financed or purchased by the contract.

(f) Nonappropriations Clause. -- No deficiency judgment may be rendered against any board of trustees, any tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation authorized by this section. The taxing power of a tax-levying authority and the State is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section."

Section 3. G.S. 115D-5 is amended by adding a new subsection to read:

"(l) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process."

Section 4. This act is effective when it becomes law and applies to contracts entered into on or after that date.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

To:
From:
Date: August 5, 1998
Re: **HB 1369** - Community College Lease Purchase Authority (3rd Edition)

Background: In July of 1997, the State Board of Community Colleges requested an Attorney General's opinion regarding whether community colleges had the authority to enter into lease purchase or installment purchase contracts for equipment. In October of 1997, the Attorney General issued an advisory letter finding that "we have determined that community colleges are not authorized to enter into [lease purchase or installment purchase] contracts." That finding was based upon the lack of any express statutory authority, which does exist for units of local government and for public schools regarding selected types of equipment. In November of 1997, President Lancaster requested that the Attorney General reconsider the finding in the advisory letter. In January of 1998, the Attorney General issued an Advisory Opinion That opinion found that community colleges did have the authority to enter into lease purchase and installment purchase contracts provided the contracts were made with the approval of the Purchase and Contract Division of the North Carolina Department of Administration. The Attorney General went on to "strongly suggest" that the Department of Community Colleges request that the General Assembly enact legislation that specifically grants the authority to community colleges. In response to these events, President Lancaster came before the Community Colleges LRC Committee and requested that it consider introducing legislation that clearly grants to community colleges the authority to enter into lease purchase and installment purchase contracts. The Committee approved legislation to that effect.

Section 1 amends G.S. 115D-20 to clarify that a board of trustees of a community college may enter into lease purchase or installment purchase contracts for equipment.

Section 2 creates a new section, G.S. 115D-58.15, which outlines the process for using lease purchase or installment purchase contracts for equipment. Community college boards of trustees would have the authority to enter into these contracts without any prior approval if the contract is for less than $100,000 or is for more than 3 years. If the community college is going to use State appropriated funds to pay for a contract that is for more than $100,000 or that is for more than years, the contract must be approved by resolution of the State Board of Community Colleges. If local funds will be used and the contract exceeds the $100,000 or 3 year threshold, the tax levying authority (the board or boards of county commissioners that are directly responsible for the local financial support and local administration of the college) have review and approval authority. If the tax levying authority approves a lease purchase or installment purchase contract it must do so by resolution and must acknowledge in writing that the community college may

require appropriations from the tax-levying authority in order to met the college's obligations under the contract. The tax-levying authority is authorized to appropriate funds in subsequent fiscal years to meet the obligation. The Local Government Commission must approve contracts for 5 or more years and over $500,000, if the payments will be made from local funds.

The term of a contract includes any options to renew or extend. The total obligation under a contract includes any additional costs for upgrading the equipment. In the event a college failed to make its payments, the vendor's only recourse would be to repossess the equipment. The vendor could not sue the college, the tax-levying authority, the State Board of Community Colleges, or the State for additional monies owned. Furthermore, neither the taxing authority of the State or a county is pledged.

Section 3 directs the State Board of Community Colleges to review and approve lease purchase and installment purchase contracts and to adopt policies and procedures for that process.

The bill is effective upon becoming law and would apply to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1571

Short Title: Regulate Ticket Broker's Fee. (Public)

Sponsors: Senators Hoyle, Shaw of Guilford; Albertson, Ballance, Blust, Carpenter, Carrington, Cooper, Dalton, Foxx, Garwood, Hartsell, Horton, Jenkins, Ledbetter, Lee, Martin of Pitt, Odom, Perdue, Plyler, Purcell, Rand, Reeves, Rucho, Soles, Warren, Weinstein, and Wellons.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION AND BONDING OR THE ESTABLISHMENT OF A TRUST ACCOUNT BY TICKET BROKERS, TO REQUIRE SALES BY A TICKET BROKER TO TAKE PLACE OFF THE PROPERTY WHERE THE EVENT IS TO BE HELD AND TO LIMIT SALES BY A TICKET BROKER TO NO MORE THAN ONE PERCENT OF THE TOTAL TICKETS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 32.

"Ticket Brokers.

"**§ 66-250. Definitions.**

As used in this Article, unless the context clearly provides otherwise, the following terms shall have the following meanings:

(1) 'Promoter' means a person who assumes the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(2) 'Ticket' means a certificate or token showing that a fare or admission fee has been paid.

(3) 'Ticket Broker' means a person who is involved in the business of reselling tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions to which the general public is admitted, and charges a premium in excess of the price printed on the ticket.

"§ 66-251. General requirements.

A Ticket Broker shall:

(1) Maintain a permanent office or place of business, excluding a post office box, for the purpose of engaging in the business of a Ticket Broker;

(2) Obtain any business license required by the State or appropriate local government;

(3) Post at its established place of business the purchaser's right to cancel the purchase of a ticket from the Ticket Broker and receive a full refund if the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such return is made more than 72 hours preceding the athletic contest or entertainment event;

(4) Refund any payment received for the purchase of a ticket under this Article if the athletic contest or entertainment event is cancelled and not rescheduled;

(5) Disclose to the purchaser in writing the difference between the price printed on the ticket and the amount which the Ticket Broker is charging for such ticket; and

(6) Meet the requirements of registration, bonding or the establishment of a trust account pursuant to this Article.

"§ 66-252. Bond or trust account required.

A Ticket Broker shall obtain a surety bond issued by a surety company authorized to do business in this State or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be two hundred thousand dollars ($200,000). The bond or trust account shall be in favor of the State of North Carolina. Any person damaged by the Ticket Broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the bond or trust account to recover damages suffered. The aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

"§ 66-253. Prohibitions.

A Ticket Broker and employees or agents of that Ticket Broker may not:

(1) Engage in the practice of selling, or attempting to sell, tickets for an athletic contest or entertainment event on the property where the athletic contest or entertainment event is to be held; or

(2) Acquire and resell in excess of one percent (1%) of the total tickets allocated for the athletic contest or entertainment event,

unless a Ticket Broker has a written contract with the promoter or operator of the property on which an athletic contest or entertainment event is to be held, which contract authorizes the Ticket Broker to resell more than one percent (1%) of the total tickets allocated for such event.

"**§ 66-254. Filing with the Secretary of State.**

(a) Prior to placing any advertisement or making any other representations to prospective buyers in this State, every Ticket Broker shall file with the Secretary of State a registration form provided by that office, and either a copy of the bond required by G.S. 66-252, or a copy of the formal notification by the depository that the trust account required by G.S. 66-252 is established, accompanied by an annual fee in the amount of two thousand five hundred dollars ($2,500) made payable to the Secretary of State. An annual renewal fee of two thousand five hundred dollars ($2,500) must be paid to the Secretary of State. These filings shall be updated as any material changes in the required information or the status of the bond or trust account occur, but no less than annually.

(b) The filing shall contain the following:

(1) The name and principal place of business of the Ticket Broker.

(2) A statement describing the activities of the Ticket Broker to include that the Ticket Broker:

a. Engages in the resale of admission tickets on a regular and ongoing basis from one or more permanent or fixed locations within this State;

b. Maintains as the principal business activity at those locations the resale of tickets;

c. Displays at those locations the Ticket Broker's registration; and

d. Maintains at those locations a listing of the names and addresses of all persons employed by the Ticket Broker.

(c) Failure to comply with the requirements of this section shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

"**§ 66-255. Penalties.**

Any person, firm, or corporation that violates any of the provisions of this Article for which there is no prescribed penalty is guilty of a Class 2 misdemeanor."

Section 2. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the

first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to sales pursuant to Article 32 of Chapter 66 of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1571
Proposed Committee Substitute S1571-PCS2905-LB001

Short Title: Regulate Ticket Broker's Fee. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION AND BONDING BY TICKET BROKERS, TO REQUIRE SALES BY A TICKET BROKER TO TAKE PLACE OFF THE PROPERTY WHERE THE EVENT IS TO BE HELD AND TO LIMIT SALES BY A TICKET BROKER TO NO MORE THAN ONE PERCENT OF THE TOTAL TICKETS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 32.

"Ticket Brokers.

"§ 66-250. Definitions.

As used in this Article, unless the context clearly provides otherwise, the following terms shall have the following meanings:

(1) 'Promoter' means a person, firm, or corporation who assumes the financial responsibilities of an athletic contest or entertainment event, including contracting with the principals, renting the site, and collecting the gate receipts.

(2) 'Ticket' means a certificate or token showing that a fare or admission fee has been paid.

(3) 'Ticket Broker' means a person, firm, or corporation who resells one or more tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or

exhibitions to which the general public is admitted, and charges a premium in excess of three dollars ($3.00) above the price printed on the ticket and meets the requirements of registration and bonding pursuant to this Article.

"§ 66-251. General requirements.

A Ticket Broker shall:

(1) Maintain a permanent office or place of business within this State, excluding a post-office box, for the purpose of engaging in the resale of admission tickets on a regular and ongoing basis;

(2) Maintain as the principal business activity at those locations the resale of tickets;

(3) Obtain any business license required by the State or appropriate local government;

(4) Post in a prominent place at its place of business the certificate of registration and the registration form required under this Article;

(5) Refund any payment received for the purchase of a ticket under this Article if during normal business hours the purchaser returns the ticket and requests a cancellation of the sale thereof within 36 hours from the time of purchase of the ticket and if such request is made more than 72 hours preceding the athletic contest or entertainment event;

(6) Refund any payment received for the purchase of a ticket under this Article if the athletic contest or entertainment event is cancelled and not rescheduled;

(7) Post in a prominent place at its place of business the requirements of subdivisions (5) and (6) of this section;

(8) Disclose to the purchaser in writing the difference between the price printed on the ticket and the amount which the Ticket Broker is charging for such ticket; and

(9) Maintain the following records regarding tickets which may be resold under this Article:

a. The name, address, and telephone number of the person, firm, or corporation from whom the ticket was purchased, unless the seller is an individual reselling such ticket acquired for personal use;

b. The date the ticket was acquired;

c. The name, date, and location of the event for which the ticket grants admission, and the location of the ticket in the venue, including where applicable, section, row, and seat number; and

d. The price at which the broker resold the ticket.

Any complaint regarding any provision of this Article shall be filed with the Office of the Attorney General. Upon request by the Office of the Attorney General, the

Ticket Broker shall provide these records to the Office of the Attorney General for its inspection.

"§ 66-252. Bond required.

A Ticket Broker shall obtain a bond issued by a surety company authorized to do business in this State. The amount of the bond shall be two hundred thousand dollars ($200,000). The bond shall be in favor of the State of North Carolina for the benefit of any person who is damaged by the Ticket Broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article. Any person claiming against the bond may maintain an action at law against the Ticket Broker and surety. The aggregate liability of the surety shall be only for actual damages and in no event shall exceed the amount of the bond.

"§ 66-253. Prohibitions.

(a) A Ticket Broker and employees or agents of that Ticket Broker may not:

(1) Engage in the practice of selling, or attempting to sell, tickets for an athletic contest or entertainment event on the property where the athletic contest or entertainment event is to be held;

(2) Acquire or resell in excess of one percent (1%) of the total tickets for the athletic contest or entertainment event; or

(3) Pay any consideration, directly or indirectly, to any promoter, operator, or ticket sales agent to acquire or assist in the acquisition of a ticket, except for the actual face value cost of the ticket and any service fee authorized by G.S. 14-344(a).

(b) A promoter, operator, or ticket sales agent may not receive any consideration, directly or indirectly, from any person, firm, or corporation to acquire or assist in the acquisition of a ticket, except for the actual face value cost of the ticket and any service fee authorized by G.S. 14-344(a).

"§ 66-254. Filing with the Secretary of State.

(a) Prior to placing any advertisement or making any other representations to prospective buyers in this State, every Ticket Broker shall file with the Secretary of State a registration form provided by that office, and a copy of the bond required by G.S. 66-252, accompanied by an annual fee in the amount of two thousand five hundred dollars ($2,500) made payable to the Secretary of State. An annual renewal fee of two thousand five hundred dollars ($2,500) must be paid to the Secretary of State. These filings shall be updated as any changes in the required information or the status of the bond occur, but no less than annually.

(b) The filing shall contain the following:

(1) The name and place of business of the Ticket Broker.

(2) A statement describing the activities of the Ticket Broker to include that the Ticket Broker:

a. Engages in the resale of admission tickets on a regular and ongoing basis from one or more permanent or fixed locations within this State;

b. Maintains as the principal business activity at those locations the resale of tickets;

c. Posts in a prominent place at those locations the Ticket Broker's certificate of registration and registration form; and

d. Maintains at those locations a listing of the names and addresses of all persons employed by the Ticket Broker.

(c) Upon finding that a Ticket Broker has complied with the requirements of subsections (a) and (b) of this section, the Secretary of State shall issue the Ticket Broker a certificate of registration.

(d) Failure to comply with the requirements of subsections (a) and (b) of this section shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

"**§ 66-255. Penalties.**

Any registered Ticket Broker that violates any of the provisions of this Article for which there is no prescribed penalty is guilty of a Class 2 misdemeanor. Any person, firm, or corporation in violation of G.S. 66-253(a)(3) or (b) shall be guilty of a Class I felony."

Section 2. G.S. 14-344 reads as rewritten:

"**§ 14-344. Sale of admission tickets in excess of printed price.**

(a) Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the first sale of tickets by the ticket sales agent. This service fee may be a pre-established amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a Class 2 misdemeanor.

(b) This section shall not apply to sales pursuant to Article 32 of Chapter 66 of the General Statutes."

Section 3. This act is effective 30 days after it becomes law.

EXPLANATION OF SENATE BILL 1571(PCS):
Regulate Ticket Broker's Fee

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 27, 1998
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1571 creates a new article in the Commerce and Business Chapter of the General Statutes that applies to the regulation of ticket brokers. Changes enacted by the PCS are in bold. A ticket broker is a "person, firm or corporation who resells tickets of admission to live athletic contests, concerts, theatre performances, or other entertainments, amusements, or exhibitions to which the general public is admitted, and charges a premium in excess of **$3.00 above** the price printed on the tickets **and meets the requirements of registration and bonding.**"

Broker requirements.--A ticket broker must meet the following requirements:

- Maintain a permanent place of business **in the State** as a ticket broker.
- Maintain as the principal business activity the resale of tickets.
- Obtain any business license required by the State or local government.
- **Post the certificate of registration and the registration form required under the new Article.**
- Refund payment received for the purchase of a ticket if the purchaser returns the ticket and requests cancellation of the sale within 36 hours after the purchase and more than 72 hours before the event.
- Refund payment for ticket if event is cancelled and not rescheduled.
- Post the above refund requirements.
- Disclose to the purchaser in writing the difference between the price on the ticket and the amount charged by the ticket broker
- **Maintain certain records about tickets which may be resold.**

Any complaint regarding a provision under the new Article is to be filed with the Attorney General. If the Attorney General makes a request, the ticket broker must provide him with the records the broker is required to maintain.

Bond required.--Each ticket broker must obtain a $200,000 bond in favor of the State for the benefit of any person damaged by a ticket broker's breach of contract or violation of the Article. The aggregate liability of the surety shall only be for actual damages and shall not exceed the amount of the bond. **The original bill required a broker to either obtain a $200,000 bond or establish a trust account in the amount of $200,000.**

Prohibitions. – A ticket broker and the broker's employees are prohibited from (1) selling tickets on the property where the event is to be held, (2) acquiring or reselling more than 1% of the total tickets for the event, or **(3) paying any consideration to a promoter, operator, or ticket sales agent to acquire a ticket, except for the face value cost of the ticket and service fee that the public would pay. The original bill allowed a broker to resell more than 1% of the total tickets if the broker had a contract with the promoter or operator authorizing the resell. A promoter, operator, or ticket sales agent is also prohibited from receiving consideration to acquire a ticket, except for the face value cost of the ticket and service fee that the general public would pay.**

Filing requirements.--A broker must file with the Secretary of State , a registration form and a copy of the required bond. The broker must also pay an annual fee of $2,500 to the Secretary of State. The registration form must contain the name and place of business and a description of the broker's activities. Failure to comply with the filing requirements is punishable by a $25 fine for the first offense and a $75 fine for each succeeding offense.

Penalties.--If there is no prescribed penalty for a violation of the Article, then the broker is guilty of a Class 2 misdemeanor. **Any person, firm, or corporation that violates the prohibition against paying or receiving consideration to acquire a ticket, except for the actual face value cost and any service fee that the public would pay, is guilty of a Class I felony.**

Exemption.--The Article exempts brokers from the criminal statute dealing with scalping. This statute allows anyone to add a reasonable service fee to the face value of tickets sold as long as the fee does not exceed $3.00. An exception is made if a promoter or operator of the property where the event is to be held and a ticket sales agency agree in writing on a greater fee for the first sale of tickets by the ticket sales agent. The existence of the service fee must be shown on the tickets. A violation of this criminal statute is a Class 2 misdemeanor.

Effective date. – The act is effective 30 days after it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1571 (Proposed Committee Substitute)

SHORT TITLE: Regulate Ticket Broker's Fee

SPONSOR(S): Senator Hoyle, et al.

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$22,500	$22,500	$22,500	$22,500	$22,500
EXPENDITURES					
Sec. of State	see **ASSUMPTIONS AND METHODOLOGY**				
Dept. of Correction	No Fiscal Impact				
Judicial Department	No Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Secretary of State; Office of the Attorney General

EFFECTIVE DATE: This act is effective 30 days after it becomes law.

BILL SUMMARY: This act sets general requirements for ticket brokers, mandates that ticket brokers obtain $200,000 surety bonds, and requires ticket brokers to register with the Department of Secretary of State.

ASSUMPTIONS AND METHODOLOGY:

Revenue

This bill requires ticket brokers to pay an annual $2,500 registration fee to the Department of Secretary of State. The Department estimates that between 2 and 15 ticket brokers will apply for registration. This fiscal note will assume the midpoint or 9 registrations per year. This number is reasonable given that 11 national ticket brokers were found in an internet search conducted by

Fiscal Research on July 27, 1998. With 9 registrations, the Department will collect $22,500 for deposit into the General Fund.

Expenditures

The Department of Secretary of State estimates that it will take a ¼ time clerical position to administer the registration program for ticket brokers. The Department recommends a grade 63 Administrative Assistant I position at a cost of $6,600. The Department could fund a temporary position each year by using salary reserve. The use of salary reserve requires approval from the Office of State Budget and Management, but does not require an appropriation.

The bill sets Class I felony and Class 2 misdemeanor charges for violation of the ticket broker act. Data is not readily available to calculate the bill's impact on the court system, but the Administrative Office of the Courts (AOC) does not believe this bill will have a substantial fiscal impact. The creation of the new Class I felony and Class 2 misdemeanor charges could increase the number of cases coming through the courts, but the AOC has no evidence to suggest that these registered ticket brokers will not comply with the new regulations. The AOC also notes that individuals who "scalp" tickets without following the registration requirements would be prosecuted under the existing misdemeanor charge. Similarly, the Sentencing Commission does not expect this bill to have a significant impact on the state prison system. The charges might affect county jail populations, but few cases are expected.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 27, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1571
Proposed Committee Substitute S1571-CSLB-1

Short Title: Study Ticket Brokering (Public)

Sponsors:

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE LEGISLATIVE RESEARCH COMMISSION SHALL STUDY ALLOWING REGULATED TICKET BROKERS TO RESELL TICKETS.

Whereas, reselling event tickets in North Carolina above face value is generally unlawful in North Carolina; and

Whereas, such practice under regulation is allowed in some states; and

Whereas, an examination of newspaper advertisements and common knowledge shows that such business already takes place in North Carolina without regulation; and

Whereas, there is concern about balancing the need for a free market with ensuring the availability of tickets to the general public by preventing the market from being cornered by brokers; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission shall study the question of whether ticket brokering can be made lawful in North Carolina in a manner which allows the free market to operate while preventing the market from being cornered to the disadvantage of the general public. The Legislative Research Commission shall report to the 1999 Regular Session of the General Assembly.

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

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8-5-1998

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Mandmann	NC Horse Council
B T Scarboro	NC Horse Council
D. O C. Hole	Greenville, City of
Bernard Allen	SOS
Sheila Pope	SOS
David Simmons	ZPA, PR
Hal Miller	NCACCT
Dorothy Hunter	NCCCS
Suzanne Williams	NCCCS
Jane P. Gray	DOT
Phil Blalock	TRIANGLE FEED FUQUAY-VARINA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8-5-1998

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Gulley	Private Horse Owner
Doug Roy	NCDOT
Jim Blythe	NCAFI
Robin Young	SCSL/NCAGSC
Susan Markham	EqHS
Meredith Norris	Lawrence Bewley & Assoc.
Andy Romanet	N.C.L.M.
JULIAN PHILPOTT	NC FARM BUREAU
Evelyn Hawthorne	UNC-CH
VL McBride	NCDA
Jim Blackburn	NC Association of County Commissioners

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, August 05, 1998

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

FAVORABLE

H.B.(CS)**1369** Comm. Colleges' Lease Purchase Authority
Sequential Referral: None
Recommended Referral: None

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

S.B. **1571** Regulate Ticket Broker's Fee
Draft Number: PCSA892
Sequential Referral: None
Recommended Referral: Senate Rules
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, AUGUST 6, 1998

8:30 A.M. - ROOM 544

SB 1433 - Exempt Voluntary Severance Pay. - Sen. Hoyle

HB 1497 - Cranberry Incorporated - Rep. Buchanan

HB 1529 - Horse Promotion Assessment. - Rep. Brown

HB 1546 - Greenville Fees - Weedy Lots. - Rep. Tolson

HB 1579 - Montgomery Delinquent Utility Bill. - Rep. Hightower

SENATE FINANCE COMMITTEE

THURSDAY, AUGUST 6, 1998

8:30 A.M. - ROOM 544

The Senate Finance Committee met on Thursday, August 6, 1998, at 8:30 a.m. in Room 544 with Senator John Kerr presiding. There were 17 committee members present.

H.B. 1497 - Cranberry Incorporated.

Representative Buchanan explained this bill and Senator Foxx moved for a Favorable Report. Motion carried. Copy of Bill included in the Minutes.

H.B. 1579 - Montgomery Delinquent Utility Bill.

Representative Hightower explained this bill. Bill Campbell, Institute of Government, gave a further explanation. There were questions from the committee members and a general discussion. David Baker, Department of Revenue, spoke on this bill. Senator Hartsell requested this bill be held until staff had an opportunity to talk with county attorneys. Copy of Bill and Explanation included in the Minutes.

H.B. 1546 - Greenville Fees - Weedy Lots.

Representative Tolson explained this bill and Senator Phillips moved to adopt a Committee Substitute. Motion carried. Senator Rand sent forth an Amendment which was adopted by the Committee on his motion. Senator Soles sent forth an Amendment which was adopted by the Committee on his motion. Senator Rand moved for a Favorable Report for HB 1546 (CS # 2), as amended and the motion carried. Copy of Bill, Committee Sub, Amendments, and Fiscal Note included in the Minutes.

H.B. 1529 - Horse Promotion Assessment.

Representative Brown was recognized to explain his bill. Senator Albertson offered a Committee Substitute from the Sub-Committee which was adopted by the committee on his motion. This bill had been discussed at great length at previous meeting and on

motion by Senator Albertson, the Committee Sub which had been worked out in the Sub-Committee was approved by the full Committee. Copy of Bill (SCS), new Committee Sub, Explanations and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 1433 not heard in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1497
Committee Substitute Favorable 6/17/98

Short Title: Cranberry Incorporated. (Local)

Sponsors:

Referred to:

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CRANBERRY.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Cranberry is enacted as follows:

"CHARTER OF TOWN OF CRANBERRY.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Cranberry, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Cranberry.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Cranberry are as follows: A circle with a radius of 4,200 feet as measured from a PK Nail set in a chiseled X located in the walkway of the Cranberry Baptist Church, said nail being located N 80° 18' 49" W 47.31' from the Northwest corner of the Church and N 50° 20' 28" W 47.93' from the Southwest corner of the Church and having NAD 83 Grid Coordinates of N 883,703.1137 and E 1,123,879.3799, except that it does not include any territory within the corporate limits of any other municipality on May 26, 1998.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Cranberry is the Board of Aldermen, which has five members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 1999 provided for by Section 4.1 of this Charter, Michael Phillip Jones is appointed Mayor and David Turbyfill, Linda T. Brown, Raymond Turbyfill, and J.W. Ollis are appointed members of the Board of Aldermen, and they shall possess and may exercise the powers granted to the Mayor and Board of Aldermen until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Board of Aldermen; Term of Office.** The qualified voters of the entire Town shall elect the members of the Board of Aldermen. In 1999 and biennially thereafter, five members of the Board of Aldermen are elected for two-year terms.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** At its organizational meeting after each election, the Board of Aldermen shall elect one of its members as Mayor to serve at the pleasure of the Board of Aldermen.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Cranberry operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in the Town of Cranberry shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Avery County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 3. (a) The Avery County Board of Elections shall conduct an election on November 3, 1998, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Cranberry the question of whether or not such area shall be incorporated as the Town of Cranberry. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Cranberry".

Section 4. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Cranberry", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1579

Short Title: Montgomery Delinquent Utility Bill. (Local)

Sponsors: Representatives Hightower; and Goodwin.

Referred to: Local and Regional Government I, if favorable, Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COUNTY OF MONTGOMERY TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE TO THE COUNTY OF MONTGOMERY.

The General Assembly of North Carolina enacts:

Section 1. Whenever water supply or distribution or sewage collection or disposal is provided by a county under Article 15 of Chapter 153A of the General Statutes, and the person legally responsible for payment of the rents, rates, fees or charges for the service fails to pay such rents, rates, fees or charges for more than 60 days after they became delinquent, the county providing the service may treat the amount due as if it were a tax due to the county and may proceed to collect the amount due through the use of levy on tangible personal property under G.S. 105-366 and G.S. 105-367.

Section 2. This act applies to Montgomery County only.

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

EXPLANATION OF HOUSE BILL 1579:
Montgomery Delinquent Utility Bill

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 5, 1998
SPONSOR: Representatives Hightower; and Goodwin

House Bill 1587 allows Montgomery County to collect utility bills as if they were taxes due. The bill would allow the County to collect in this manner for water supply or distribution or sewage collection or disposal provided by the County when the person responsible for the bill fails to pay for more than 60 days after the bill becomes delinquent. The County could collect the delinquent amount through the use of levy on the person's tangible personal property under G.S. 105-366 and G.S. 105-367. G.S. 105-366 gives the tax collector authority to levy on the delinquent person's personal property. G.S. 105-367 provides that the tax collector shall conduct the sale of the personal property, unless the governing body of the taxing unit authorizes the tax collector to direct the sheriff to execute on the property and conduct the sale.

During the 1989 Session, the General Assembly gave authority to collect certain utility bills as if they were taxes due to the Town of Richfield in Stanly County. During the current Session, two bill have been introduced that would give the Town of Stanfield, City of Locust, and Town of Mount Gilead the same authority. All three are located in Stanly County. House Bill 1587 would give the Town of Stanfield and City of Locust this authority. House Bill 1587 passed the House and Senate and is now in the House Committee on Local and Regional Government II. House Bill 1312 would give the Town of Mount Gilead the authority to collect certain utility bills as if they were taxes due. House Bill 1312 has been referred to the House Subcommittee on Local, Regional, and State Revenues.

Other counties that have the authority to collect certain fees the same as property taxes are the following:

- 1981 Union County given authority to collect delinquent water supply or distribution or sewage collection or disposal by levying on tangible personal property or by attachment and garnishment.
- 1989 Union County given authority to collect delinquent sewerage connection and use charges for the towns of Indian Trail and Stallings by levying on tangible personal property or by attachment and garnishment.
- 1989 Haywood County, Pender County and Surf City given authority to collect delinquent solid waste collection and disposal fees by using the same remedies to collect delinquent ad valorem taxes.

- 1993 City of Durham given authority to collect delinquent water and sewer fees resulting from leaking pipes or fixtures owned by the real property owner and located on the real property using or served by the public enterprise. The City can collect the delinquent fees in a foreclosure action using the same procedure for collecting delinquent personal or real property taxes. The local act sets out notice requirements and opportunity for appeal The act also states that the lien is inferior to all prior and subsequent liens for federal, State, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

§ 153A-293. (See editor's note) Collection of fees for solid waste disposal facilities and solid waste collection services.

A county may adopt an ordinance providing that any fee imposed under G.S. 153A-292 may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee. (1989, c. 591, ss. 1, 2; 1989 (Reg. Sess., 1990), cc. 905, 938, 940, 974, 1017; 1991, c. 652, s. 2.)

~~**Editor's Note.** — This section was originally derived from Session Laws 1989, c. 591, effective July 6, 1989, and was applicable to fees imposed on or after April 1, 1989. As enacted, c. 591 was applicable to Ashe, Robeson and Wayne Counties only. The section was made applicable to additional counties by Session Laws 1989 (Reg. Sess., 1990), as follows: Chapter 905, effective July 13, 1990, made this section applicable to Alleghany, Caswell, Richmond, and Watauga; c. 938, effective July 17, 1990, and applicable to fees imposed on or after Jan. 1, 1991, made this section applicable to Polk, Transylvania, and Cleveland; c. 940, effective July 17, 1990, made this section applicable to Duplin; c. 974, effective July 19, 1990, made this section applicable to Burke, Gaston, Lee, Lenoir, and Washington; c. 1017, effective July 26, 1990, made this section applicable to Anson and Montgomery.~~

Session Laws 1991, c. 652, is entitled "An act to authorize cities and counties to impose an availability fee for solid waste disposal facilities and to bill and collect the fee in the same manner as property taxes."

Session Laws 1991, c. 652, s. 2, amends § 153A-293 in the coded bill drafting format to read as follows:

"§ 153A-293. Collection of fees ~~in certain counties.~~ for solid waste disposal facilities and solid waste collection services.

~~(a)~~ A county may ~~provide that~~ adopt an ordinance providing that any fee imposed under G.S. 153A-292 may be billed ~~with the ad valorem~~ property taxes, may be payable in the same manner as ~~ad valorem~~ property taxes, and, in the case of nonpayment, may ~~result in the imposition of a lien on the property owner's real property in the same manner as ad valorem taxes.~~ be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

~~(b) This section applies to Alleghany, Anson, Ashe, Burke, Caswell, Cleveland, Duplin, Gaston, Lee, Lenoir, Montgomery, Polk, Richmond, Robeson, Transylvania, Washington, Watauga, and Wayne Counties only.~~"

See § 120-20.1.

This section is set out in the form above at the direction of the Revisor of Statutes.

Section 6 of Session Laws 1991, c. 652 provides: "Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

Effect of Amendments. — The 1991 amendment, effective July 12, 1991, rewrote this section. See Editor's note above.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1546
Committee Substitute Favorable 7/2/98
Committee Substitute #2 Favorable 7/15/98

Short Title: Greenville Fees/Weedy Lots. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CHARGE A FEE NOT TO EXCEED TEN DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE CITY TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may charge a fee not to exceed ten dollars ($10.00) for an uncertified copy of a police incident or accident report, except that a representative of a newspaper, wire service, radio station, or television station shall not be charged a fee that exceeds the municipality's actual cost of making the uncertified copy and the operator of a vehicle involved in an accident shall be entitled to one free copy of an uncertified copy. The fees collected shall be used for law enforcement purposes only.

Section 2. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous

calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 3. This act applies to the Towns of Denton and Farmville and the City of Greenville only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1546
Committee Substitute Favorable 7/2/98
Committee Substitute #2 Favorable 7/15/98
Proposed Senate Committee Substitute H1546-PCS9020-LA002

Short Title: Greenville Fees/Weedy Lots. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CHARGE A FEE NOT TO EXCEED FIVE DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE CITY TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may charge a fee not to exceed five dollars ($5.00) for an uncertified copy of a police incident or accident report, except that the operator of a vehicle involved in an accident shall be entitled to one free copy of an uncertified copy. The fees collected shall be used for law enforcement purposes only.

Section 2. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 3. This act applies to the Towns of Denton and Farmville and the City of Greenville only.

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

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3rd

H. B. No. 1546 DATE

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

COMMITTEE SUBSTITUTE

Rep.) Wellons
Sen.)

moves to amend the bill on page 1, line 12 - 13

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"uncertified copy. The fees collected shall be used for".

SIGNED

ADOPTED FAILED TABLED

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1546-CSLA-002 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
) Soles
Sen.)

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by deleting the word "TEN" and substituting the word "FIVE";

and on page 1, line 9 by deleting the phrase "ten dollars ($10.00)" and substituting the phrase "five dollars ($5.00)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1546 CSLA-002 DATE _____

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

Rep.) Rand
Sen.)

moves to amend the bill on page 1, line S 10 - 13

by "incident or accident report, except that the operator of a

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1546 CS #2

SHORT TITLE: Greenville Fees/Weedy Lots

SPONSOR(S): Rep. Tolson

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
	NO GENERAL FUND IMPACT				
Greenville	**$75,000**	**$75,000**	**$75,000**	**$75,000**	**$75,000**
Denton	**0**	**0**	**0**	**0**	**0**
Farmville	**0**	**0**	**0**	**0**	**0**
EXPENDITURES					
	NO GENERAL FUND IMPACT				
	Some reduction in postal expenditures by listed municipalities.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Denton and Farmville, and the City of Greenville.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: This bill applies to the Towns of Denton and Farmville, and the City of Greenville. The bill has two parts. First, the bill authorizes the listed municipalities to charge a ten dollar ($ 10.00) fee for an uncertified copy of police incident or accident report. The operator of a vehicle involved in an accident is entitled to one free uncertified copy of the report. Representatives of the media pay the municipalities' cost of making the copy, and not the $10.00 listed above. The fees provide additional law enforcement funding. The second part of the bill addresses overgrown lots. The bill authorizes Greenville, Farmville, and Denton to notify the owner of a chronically overgrown lot of the municipality's overgrown vegetation ordinance. The bill authorizes the municipality to "remedy" the violation, (mow, etc.) once the owner is notified and again found in violation. The cost associated with mowing become the equalivent of a tax

lien against the property. Under the bill, notice must be given at least once during the calendar year. The bill defines a chronic violator as a person who owns property sited at least three times during the previous calendar year for overgrown vegetation.

ASSUMPTIONS AND METHODOLOGY:

Greenville: According to the City Attorney, Greenville receives approximately 10,000 requests per year for uncertified accident reports. This number does not include those requested by the media. Of the 10,000 requests, approximately 25% are from vehicle owners, and are not covered by the bill. As such, the bill impacts approximately 7,500 requests. Assuming the city charges the maximum fee of $10.00 on each request, the total potential revenue to the city is $75,000 (7,500 requests x $10 each) . The City Attorney believes most the 7,500 requests are from attorneys following up on claims, and insurance adjusters. This note assumes the number of requests remains constant over time. The city believes the fiscal impact of the weedy lot portion of the bill is minimal. The only expected savings to the city is the cost of certified postage. (Under current law the city must notify the owner each time there is a violation.) They believe the primary impact of this portion of the bill is procedural.

Denton: According to the Denton Town Manager, the town's primary interest in the bill is the weedy lot provision. They believe the town will see some decrease in their postal expenses as a result of this provision. However, they expect the fiscal impact to be minimal. The town of Denton currently charges $2.00 for an accident report. They now receive approximately 100 requests for accident reports. It is the town's intention to continue to charge a $2.00 fee.

Farmville: This community's primary interest is also in the weedy lot portion of the bill. The Town Manager estimates that the weedy lot provision will save the community less than $100 a year in postage. The change is primarily procedural. The Town Manager believes the community will continue to charge the current $1.00 fee for uncertified copies of accident reports. As a result, no significant fiscal impact is expected.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: August 3, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/30/98
Fourth Edition Engrossed 7/9/98
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/22/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.
(4) 'Equine' means a horse, pony, mule, donkey, or hinny.
(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"§ 106-823. Referendum.

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.
(2) The period for which the assessment shall be levied, not to exceed three years.
(3) The time and place of the referendum.
(4) Procedures for conducting the referendum and counting votes.
(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"§ 106-824. Majority vote required; collection of assessment.

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum 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 D

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/30/98
Fourth Edition Engrossed 7/9/98
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/22/98
Senate Proposed Committee Substitute H1529-CSLA-001

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.

"§ 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 feed manufacturer or distributor who fails to pay the assessment.

"§ 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 one year 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 equines, with respect to which separate provisions have been made."

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

EXPLANATION OF HOUSE BILL 1529 (5th Ed.):
Horse Promotion Assessment

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 3, 1998
SPONSOR: Representative Brown

House Bill 1529 (5th Edition) provides for a referendum to allow horse owners to assess themselves through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council. These funds will be used to promote interests in the horse industry and for administrative expenses reasonably necessary to carry out this promotion. The act is effective when it become law. Provisions were added to the Bill in House Finance. These provisions were deleted after the Bill passed the House and was referred to the Senate Committee on Agriculture. The Bill now before the Senate Finance Committee is essentially the same bill that was adopted by the House Committee on Agriculture.

The Bill authorizes the North Carolina Horse Council to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If the assessment is approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection feed imposed under the Commercial Feed Law, Article 31C of Chapter 106. Anyone purchasing commercial horse feed upon which the assessment has been paid may demand a refund of the assessment by writing the Horse Council within 30 days of buying feed and providing proof of purchase. The Department must remit funds to the Horse Council at least quarterly.

Similar promotion assessment acts have been enacted for flue-cured tobacco farmers, strawberry producers and pork producers.

House Bill 1529 was initially referred to the House Committee on Agriculture where definitions for "equine" and "horse owner" were added. The Bill was then referred to House Finance where the following provisions were added: (1) requiring Horse Council to notify horse owners of the referendum through press releases to newspapers and trade journals and to post notice of the referendum in places where commercial horse feed is sold, and (2) specifying that the assessment is voluntary and may be avoided by filing a certificate that the person elects not to pay. After the Bill passed the House, it was referred to the Senate Committee on Agriculture. There the Bill deleted the provisions added by the House Finance Committee.

EXPLANATION OF HOUSE BILL 1529 (PCS):
Horse Promotion Assessment

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 5, 1998
SPONSOR: Representative Brown

The proposed Senate committee substitute for House Bill 1529 provides for a referendum to allow horse owners to assess themselves through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council. These funds will be used to promote interests in the horse industry and for administrative expenses reasonably necessary to carry out this promotion. The act is effective when it become law. Provisions were added to the Bill in House Finance. These provisions were deleted after the Bill passed the House and was referred to the Senate Committee on Agriculture. **The Bill now before the Senate Finance Committee is essentially the same bill that was adopted by the House Committee on Agriculture except for the following changes:**

- **A horse owner no longer includes a person who has a financial interest in equines or an equine operation.**
- **The Horse Council may not bring an action to collect unpaid assessments against a horse owner. The action may only be brought against a feed manufacturer or distributor. There is no right to recover costs of action, including attorneys fees.**
- **A person now has up to one year to demand a refund. The earlier version allowed only 30 days.**

The Bill authorizes the North Carolina Horse Council to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If the assessment is approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection feed imposed under the Commercial Feed Law, Article 31C of Chapter 106. Anyone purchasing commercial horse feed upon which the assessment has been paid may demand a refund of the assessment by writing the

Horse Council within 30 days of buying feed and providing proof of purchase. The Department must remit funds to the Horse Council at least quarterly.

Similar promotion assessment acts have been enacted for flue-cured tobacco farmers, strawberry producers and pork producers.

House Bill 1529 was initially referred to the House Committee on Agriculture where definitions for "equine" and "horse owner" were added. The Bill was then referred to House Finance where the following provisions were added: (1) requiring Horse Council to notify horse owners of the referendum through press releases to newspapers and trade journals and to post notice of the referendum in places where commercial horse feed is sold, and (2) specifying that the assessment is voluntary and may be avoided by filing a certificate that the person elects not to pay. After the Bill passed the House, it was referred to the Senate Committee on Agriculture. There the Bill deleted the provisions added by the House Finance Committee.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1529 (Second Edition)

SHORT TITLE: Horse Promotion Assessment

SPONSOR(S): Rep. Brown

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Horse Council Funds	$200,000	$200,000	$200,000		
EXPENDITURES	(to be determined by the Horse Council)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

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

BILL SUMMARY: The bill authorizes the North Carolina Horse Council to hold a referendum among horse owners on whether to levy a fee of up to $2 a ton on commercial horse feed for the purpose of promoting the horse industry. If approved by a majority of the horse owners, the Department of Agriculture and Consumer Services will collect the fee from commercial feed dealers and distributors and remit the funds to the Horse Council on a quarterly basis. The assessment will be levied for no more than three years. Horse owners have a right to request a refund of the fee from the Horse Council if they do not wish to participate in the promotion effort.

ASSUMPTIONS AND METHODOLOGY: In the 1996 North Carolina Equine Survey, the Department of Agriculture and Consumer Services identified 33,000 equine owners and 132,000 head of equine in the state. The Department 's 1996 Feed Tonnage Report showed 97,279 tons of horse feed were purchased in the state. Horse feed sales grew 8.7% a year from 1993 to 1996, but the growth rate was only 4.4% from 1995 to 1996. Without data on the projected growth in the state's equine herd, it is impossible to predict what the future growth in feed sales will be. This

note assumes a flat 100,000 tons of horse feed are purchased each year during the three years that the assessment is in place. If the referendum is successful, this note assumes the Horse Council will assess $2 per ton beginning in FY 1998-99 for revenues of $200,000 per year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 20, 1998

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

THURSDAY, AUGUST 6, 1998 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Fotos	NCAPT
Andy Romanet	N.C.L.M.
LYMAN COOPER	CSX CORP
Jeb Alley	ZDA PA
Alicia Gregory	Poyner & Spruill
Erskine Bowles	Charlotte
Julian Philpott	NC Farm Bureau
Estherine Davis	Electricities of NC Inc.
David Simmons	ZDA, PA
Nan Mercadante	Poyner & Spruill
Leslie Bulaeger	NCCBI

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

THURSDAY, AUGUST 6, 1998 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Crumbie	IOA
Jim Hardesty	NRC + Tom Bass
Doug Lassiter	N.C. Septic Tank Assoc
Susan Markham	Eghs
Doug Rogers	NCDOT
David Baker	DOR
Sam Knox	Private Horse Owner
Phil Blalock	Triangle Feed & Supply Fuquay Varina
Dick Mangum	NC Horse Council
David McLeod	NCDA & CS
R. Paul Williams	NCHBA

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, AUGUST 6, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, AUGUST 6, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
VL McBride	NCOA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, August 06, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**1497** Cranberry Incorporated.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1546** Greenville Fees/Weedy Lots.
Draft Number: PCS9020
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1529** Horse Promotion Assessment.
Draft Number: PCS6462
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Aug 6 HB 1497 1529 1546

AGENDA

SENATE FINANCE COMMITTEE

MEETING

WEDNESDAY, AUGUST 12, 1998

ROON 544 AT 12:00 NOON

Opening of Meeting - Senator David W. Hoyle, Presiding

Introduction of Pages

BILLS TO BE CONSIDERED:

- **HB 1275 - Statesville Airport Lease Length - Rep. Mitchell**
- **HB 1401 - Pleasant Garden Boundaries - Rep. Decker**
- **HB 1602 - Rowland Charter Revision - Rep. Bonner**
- **HB 1629 - Asheboro Annexations - Rep. Culp**

Adjournment of Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 12, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, August 12, 1998 at 12:00 Noon in Room 544 LOB. There were 20 Members of the Committee present. Senator David Hoyle, Co-chairman, called the Meeting to order and introduced the Pages, they were: Matt Tepper from Cary, North Carolina, sponsored by Senator Eric Reeves, Kim and Katie Bucklew from Laurinburg, North Carolina, sponsored by Senator William Purcell and Tuwela Moore from Gastonia, North Carolina, sponsored by Senator David Hoyle

H. B. 1275 - Statesville Airport Lease Length

Senator Jim Phillips explained the bill. Senator Cochrane moved for a "favorable" report, motion passed. (Copy of Bill is included in Minutes).

H. B. 1401 - Pleasant Garden Boundaries

Representative Mike Decker came to explain the bill. Senator Lee moved for a "favorable" report, motion passed. (Copy of Bill included in Minutes).

H. B. 1602 - Rowland Charter Revision

Representative Bonner came to explain the bill. Senator Weinstein moved for a "favorable" report, motion passed. (Copy of Bill included in Minutes).

H. B. 1629 - Asheboro Annexations

Senator Ellie Kinnaird came to explain the bill. Senator Lee moved a "favorable" report, motion passed. (Copy of Bill is included in Minutes).

Meeting adjourned

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report dated 8-12-98 is Attachment #2
Committee Report dated 10-6-98 is Attachment #3
Committee Report dated 10-27-98 is Attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1275

Short Title: Statesville Airport Lease Length. (Local)

Sponsors: Representative Mitchell.

Referred to: Local and Regional Government II, if favorable, Finance.

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE PERMISSIBLE LENGTH OF LEASES ENTERED INTO BY THE STATESVILLE MUNICIPAL AIRPORT FROM TWENTY TO TWENTY-FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 883 of the 1987 Session Laws is amended by deleting "20 years" and substituting "25 years."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1401

Short Title: Pleasant Garden Boundaries. (Local)

Sponsors: Representative Decker.

Referred to: Local and Regional Government II, if favorable, Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF PLEASANT GARDEN TO INCLUDE THE ENTIRE RIGHT-OF-WAY OF CERTAIN ROADS.

The General Assembly of North Carolina enacts:

Section 1. Section 2-1 of the Charter of the Town of Pleasant Garden, being Section 1 of S.L. 1997-344, reads as rewritten:

"Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Pleasant Garden are as follows:

BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; thence, along the southern right-of-way line of said Ritters: Lake Road, eastwardly approximately 8440 feet to a point;

thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly approximately 500 feet to a point;

thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly approximately 1750 feet to a point;

thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7, northeastwardly approximately 2140 feet to a point;

thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly approximately 150 feet to a point;

thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43, eastwardly approximately 2275 feet to a point;

thence, along the western right-of-way line of Alliance Church Road (N.C. Highway 22), northwardly approximately 500 feet to a point;
thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet to a point in the northern right-of-way line of a proposed new road connecting Alliance Church Road with U. S. Highway 421;
thence, along the northern right-of-way line of said connector road, northeastwardly approximately 1350 feet to a point;
thence, along the southwestern right-of-way line of U. S. Highway 421, southeastwardly approximately 14,400 feet to a point in the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411), southwardly approximately 2,500 feet to a point;
thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly approximately 350 feet to a point;
thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-9-579-411-19, southwardly approximately 175 feet to a point in the northern line of tax parcel ACL-9-579-411-43;
thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly approximately 300 feet to a point in the ~~centerline~~ western right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ western right-of-way line of said Hagan-Stone Park Road (S.R. 3411), southwestwardly and westwardly approximately 3,600 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly approximately 1,750 feet to a point;
thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly approximately 1,900 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly approximately 230 feet to a point;
thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, eastwardly approximately 600 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, northwardly approximately 1,200 feet to a point in the ~~centerline~~ southern right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) northeastwardly approximately 800 feet to a point;
thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-Stone Park, northwardly approximately 1,530 feet to a point in the southern line of tax parcel ACL-9-579-422-12;
thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, westwardly approximately 480 feet to a point;
thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, northwardly approximately 1,350 feet to a point in the ~~centerline~~ southern right-of-way line of Tabernacle Church Road (S.R. 3412);

thence, along the ~~centerline~~ southern right-of-way line of said Tabernacle Church Road (S.R. 3412) westwardly approximately 150 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park southwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately 2,100 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park southwardly approximately 280 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with Hagan-Stone Park southwestwardly approximately 1,370 feet to a point;
thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax parcel ACL-9-579-477-40;
thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-Stone Park, westwardly approximately 1,350 feet to a point;
thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800 feet to a point in the ~~centerline~~ southern right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the ~~centerline~~ southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) eastwardly approximately 2,800 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, southwardly approximately 125 feet to a point;
thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, eastwardly approximately 1,200 feet to a point;
thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:
(1) Southwardly approximately 500 feet to a point
(2) Eastwardly approximately 100 feet to a point
(3) Southwardly approximately 975 feet to a point
(4) Westwardly approximately 190 feet to a point
(5) Southwardly approximately 1,300 feet to a point in the ~~centerline~~ southern right-of-way line of Fieldview Road (S.R. 3407);
thence, along the ~~centerline~~ southern right-of-way line of said Fieldview Road (S.R. 3407) southeastwardly and eastwardly approximately 1,700 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly approximately 620 feet to a point;
thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly approximately 300 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly approximately 400 feet to a point;
thence, along the southern line of tax parcels ACL-9-577--420-21, 22, and 23, north westwardly approximately 800 feet to a point;

thence, along the southern line of tax parcels ACL-9-577-420-9 and 26, southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4, the following 3 courses:
(1) Southwardly approximately 200 feet to a point
(2) Eastwardly approximately 50 feet to a point
(3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax parcel ACL-9-579-479N-4;
thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly approximately 1,800 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly approximately 280 feet to a point;
thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly approximately 200 feet to a point;
thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly approximately 380 feet to a point in the ~~centerline~~ western right-of-way line of N.C. Highway 22;
thence, along the ~~centerline~~ western right-of-way line of said N.C. Highway 22, southeastwardly approximately 600 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17, ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;
thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly approximately 1,900 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly approximately 1,430 feet to a point in the ~~centerline~~ western right-of-way line of Kearney Road (S.R. 3404);
thence, along the ~~centerline~~ western right-of-way line of said Kearney Road (S.R. 3404), northwardly approximately 300 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2, westwardly approximately 2,200 feet to a point;
thence, along a western line of tax parcel ACL-3-158-546-2, northwardly approximately 960 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly approximately 1,300 feet to a point;
thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17, 18, 19, and 20, southwardly approximately 1,600 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly approximately 300 feet to a point in the ~~centerline~~ western right-of-way line of Hunt Road (S.R. 3402);
thence, along the ~~centerline~~ western right-of-way line of said Hunt Road (S.R. 3402), southward approximately 650 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly approximately 1,000 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly approximately 630 feet to a point;
thence, along the western line of tax parcels ACL-3-158-546-7, and 30, northeastwardly approximately 1,020 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast corner of tax parcel ACL-91-6784-551-12;
thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly approximately 500 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly approximately 520 feet to a point, the northeast corner of Center Subdivision;
thence, along eastern lines of said Center Subdivision, which is designated as A-Sub of block 551,tax map ACL-91-6784, the following 5 courses;
(1) Southwestwardly approximately 500 feet to a point;
(2) Southeastwardly approximately 200 feet to a point;
(3) Southwestwardly approximately 600 feet to a point;
(4) North westwardly approximately 200 feet to a point;
(5) Southwestwardly approximately 300 feet to a point;
thence, along the southern line of said Center Subdivision, westwardly approximately 460 feet to a point in the ~~centerline~~ eastern right-of-way line of Branson Mill Road (S.R. 3437);
thence, along the ~~centerline~~ eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 100 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-550N-1;
thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly approximately 75 feet to a point;
thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15, westwardly approximately 350 feet to a point;
thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly approximately 700 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and ACL-91-6784-551-2 and crossing Hodgin Valley Road (S.R. 3440), northwardly approximately 2,000 feet to a point;
thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and the northern line of Center Subdivision, which is designated as A-Sub of block 551, ACL-91-6784, westwardly approximately 2,170 feet to a point in the ~~centerline~~ eastern right-of-way line of Branson Mill Road (S.R. 3437);
thence, along the ~~centerline~~ eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 1,100 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly approximately 400 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-18 and 8, northwestwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22, westward approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-22 and 23, northwestwardly approximately 1,050 feet to a point;
thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-552S-6;
thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly approximately 750 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5, southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel ACL-91-6784-611S-3;
thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it meanders southwestwardly approximately 840 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-611S-3, southwestwardly approximately 620 feet to a point;
thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it meanders northwestwardly approximately 875 feet to a point in the ~~centerline~~ southern right-of-way line of Robolo Road (S.R. 3439);
thence, along the ~~centerline~~ southern right-of-way line of said Robolo Road (S.R. 3439) southwestwardly; approximately 900 feet to its intersection with the western line of Davis Mill Road;
thence, along the western line of Davis Mill Road, northwardly approximately 7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;
thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly approximately 470 feet to a point in the westernline of Davis Mill Road (S.R. 3433);
thence, along the westernline of said Davis Mill Road (S.R. 3433), northeastwardly approximately 3,050 feet to a point;
thence, along the southern line of Nocho Park Subdivision which is designated as B-Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
thence, along the western line of said Nocho Park Subdivision, northwardly approximately 1,350 feet to a point in the ~~centerline~~ northern right-of-way line of Sheraton Park (S.R. 3426);
thence, along the ~~centerline~~ northern right-of-way line of said Sheraton Park Road (S.R. 3426) westwardly approximately 1440 feet to its intersection with the western line of Fentress Township with Sumner Township;
thence, along the western line of Fentress Township with Sumner Township, northwardly approximately 8180 feet to the point of BEGINNING."

Section 2. This act becomes effective June 30, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1602

Short Title: Rowland Charter Revision. (Local)

Sponsors: Representatives Bonner; Sutton and Yongue.

Referred to: Local and Regional Government I, if favorable, Finance.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF ROWLAND.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Rowland is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF ROWLAND.

"ARTICLE 1. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1 **Incorporation.** The Town of Rowland, North Carolina, in Robeson County, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name of the 'Town of Rowland', hereinafter at times referred to as the 'Town'.

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Rowland specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of

the Secretary of State, the Robeson County Register of Deeds, and the appropriate board of elections.

"ARTICLE 2. GOVERNING BODY.

"Section 2.1. **Identification.** The Town Board of Commissioners hereinafter referred to as the 'Board', shall be the governing body of the Town.

"Section 2.2. **Composition; Terms of Office.** The Town Board shall be composed of four Commissioners to be elected by all the qualified voters of the Town voting at large for terms of four years, or until their successors are elected and qualified, and the Mayor.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of two years or until a successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the Board, shall have the right to vote only when there is an equal division on any question or matter before the Board, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Section 2.4. **Qualifications for Office; Compensation; Vacancies.** The qualifications and compensation of the Mayor and Commissioners shall be in accordance with general law. In addition, no Mayor or Commissioner shall be qualified to hold office if that person: (i) is more than 30 days delinquent in the payment of any sum of money owed by that person to the Town of Rowland, (ii) has been convicted of any felony by any court of competent jurisdiction, (iii) has failed to attend more than three meetings of the Town Board of which that person has had proper notice. If the Town Board determines that one of the above-listed qualifications has been violated by a Commissioner or the Mayor and that such violation was within the control of the violator or that the violation can reasonably be expected to continue for an additional three months, the Board shall declare the position of the violator vacant and shall proceed to fill the vacancy. Vacancies shall be filled as provided below.

"Section 2.5. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. While presiding at meetings of the Board, the Mayor Pro Tempore shall be entitled to cast his vote as a Commissioner, but shall not cast an additional deciding vote in the case of a tie vote. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Board.

"Section 2.6. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meeting. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 shall apply. Official action of the Board shall in every instance be by majority vote, provided that a quorum, consisting of a majority of the actual membership of the Board, is present. Vacant seats are to be subtracted from the normal Board membership to determine the actual membership.

"Section 2.7. **Quorum.** A majority of the actual membership of the council plus the Mayor (or the Mayor Pro Tempore), excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by

majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. Any number of commissioner(s) attending a duly called meeting or public hearing may, by majority vote, with or without the presence of a presiding officer, recess the meeting or hearing to another time, without the necessity for additional publicity of the meeting or hearing.

"ARTICLE 3. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan election and runoff election method as provided in G.S. 163-279(a)(4) and G.S. 163-293.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election.

"Section 3.3. **Election of Commissioners.** Two Commissioners shall be elected in each regular municipal election.

"Section 3.4. **Special Elections to Fill Vacancies.** If there is a vacancy in the office of Mayor or Commissioner after qualification or because of a refusal to qualify, a special election shall be called by the Town Board and shall be held to fill the vacancy. However, if the vacancy occurs after the opening date for filing of candidacy under the General Statutes in the year in which the term is to expire, no special election shall be held. In such case, the provisions of G.S. 160A-63 shall control. Candidates in any special election may file their notices of candidacy no earlier than noon on the tenth Friday preceding the special election and no later than noon on the seventh Friday preceding the special election.

"Section 3.5. **Other Special Elections and Referenda.** Except as specified above, special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE 4. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town of Rowland shall operate under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties as may be prescribed by law or assigned by the Town Board.

"Section 4.3. **Finance Officer.** The Town Board shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Town Board, subject to general law.

"Section 4.4. **Tax Collector.** The Board shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town and to perform such other duties as may be prescribed by law or assigned by the Town Board, subject to general law.

"Section 4.5. **Town Attorney.** The Board of Commissioners shall appoint a Town Attorney who shall be an attorney-at-law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure.

"Section 4.6. **Other Administrative Officers and Employees.** The Board may authorize other positions, subject to the requirements of general law.

"Section 4.7. **Consolidation of Functions.** The Board may consolidate any two or more of the following positions: Clerk, Tax Collector, Finance Officer, and officers and employees authorized under Section 4.6, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

"Section 4.8. **Bond of Officers.** The Finance Officer, Tax Collector, and all other employees of the Town whose duties require them to handle any funds of the Town, and such other officers and employees of the Town as the Board may by resolution determine, shall give bonds for the faithful performance of their duties. The Town Board shall require by resolution the giving and maintenance of all such bonds in amounts adequate to protect the Town from loss. The premiums on such bonds shall be paid by the Town.

"ARTICLE 5. MISCELLANEOUS.

"Section 5.1. **Town Departments.** The Board of Commissioners may establish such departments to serve the Town as they deem appropriate.

"Section 5.2. **Conflicts of Interest.** Any officer, employee, Commissioner or Mayor who has a financial interest, direct or indirect, in any proposed contract with the Town or in a proposed sale of any land, material, supplies, or services to the Town or to a contractor supplying the Town, shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such a contract or sale. If the Town Board determines that any officer, employee, Commissioner, or Mayor has willfully violated the requirements of this section, that person shall be removed by the Town Board from his office or position. Violation of this section with knowledge, expressed or implied, by the person or corporation contracting with or making a sale to the Town shall render the contract void.

"Section 5.3. **Construction Outside Corporate Limits.** In addition to any authority granted by general law, the Town is authorized to construct or reconstruct water and sewer lines and facilities outside the corporate limits of the Town as the Board may deem appropriate, to furnish water and sewer services to homeowners and industries outside the Town limits, and to make such charges for the services as the Board may deem reasonable.

"Section 5.4. **Severability of Provisions.** If any of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Section 2. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 266, Private Laws of 1889

Chapter 149, Private Laws of 1909
Chapter 155, Private Laws of 1909
Chapter 51, Private Laws, Extra Session of 1913
Chapter 217, Private Laws of 1915
Chapter 46, Private Laws, Extra Session of 1920
Chapter 74, Private Laws, Extra Session of 1920
Chapter 110, Private Laws of 1925
Chapter 135, Private Laws of 1933
Chapter 66, Private Laws of 1935
Chapter 123, Private Laws of 1935
Chapter 306, Public-Local Laws of 1937
Chapter 864, Session Laws of 1951
Chapter 867, Session Laws of 1961, except for Section 1.

Section 3. This act does not repeal or affect any rights or obligations, nor any actions or proceedings previously established or currently pending. All existing ordinances, resolutions, and other provisions of the Town of Rowland shall continue in effect until repealed or amended.

Section 4. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or remodified, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute which most clearly corresponds to the statutory provision which is superseded or modified. No change in the General Statutes which conflicts with the provisions of this Charter shall supersede any provision of this Charter unless an intention to do so is expressly stated.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1629
Committee Substitute Favorable 6/30/98
Committee Substitute #2 Favorable 7/28/98

Short Title: Asheboro Annexations. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, TO ANNEX AN AREA AS DESCRIBED INTO THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, AND GIVE ADDITIONAL AUTHORITY TO THAT CITY TO MAKE VOLUNTARY SATELLITE ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. (a) The following described territory is removed from the corporate limits of the City of Asheboro:

Lying and being in Franklinville Township, Randolph County, North Carolina:

BEGINNING at a point in the west right-of-way line of Henley Country Road (NCSR 2215), said point being also located at North Carolina Grid Coordinates North = 731,316.884 and East = 1,770,498.738 (NAD 27); thence from said beginning point the following courses and distances along the west right-of-way line of Henley Country Road: South 24 degrees 52 minutes 14 seconds East 142.66 feet to a point, South 23 degrees 00 minutes 08 seconds East 138.13 feet to a point, South 19 degrees 40 minutes 50 seconds East 325.13 feet to a point, South 14 degrees 35 minutes 16 seconds East 57.32 feet to a point, South 09 degrees 38 minutes 38 seconds East 104.07 feet to a point, South 04 degrees 42 minutes 37 seconds East 88.53 feet to a point, South 00 degrees 09 minutes 31 seconds East 92.51 feet to a point and South 09 degrees 10 minutes 54 seconds West 100.42 feet to an existing iron pipe, in Michael Glass' line in the west right-of-way of Henley Country Road;

thence the following courses and distances along Michael Glass' line: North 54 degrees 38 minutes 39 seconds West 188.23 feet to an existing iron rod, North 63 degrees 54 minutes 37 seconds West 44.32 feet to an existing iron rod, North 69 degrees 18 minutes 05 seconds West 21.50 feet to an existing iron rod at a control corner and South 28 degrees 55 minutes 31 seconds West 514.60 feet to an existing iron rod at a control corner in the line of R. B. York, Jr.; thence North 89 degrees 22 minutes 52 seconds West, along York's line, 779.05 feet to an existing iron pipe and stones in the centerline of Lick Branch; thence the following courses and distances along the centerline of Lick Branch: North 28 degrees 16 minutes 09 seconds East 69.15 feet to a point, North 23 degrees 29 minutes 58 seconds West 63.98 feet to a point, North 45 degrees 00 minutes 12 seconds East 79.02 feet to a point, North 74 degrees 24 minutes 27 seconds East 56.85 feet to a point, North 17 degrees 01 minute 35 seconds East 130.33 feet to a point, North 05 degrees 32 minutes 53 seconds East 124.74 feet to a point, North 27 degrees 53 minutes 19 seconds East 58.11 feet to a point, North 38 degrees 04 minutes 18 seconds West 28.91 feet to a point, North 13 degrees 07 minutes 00 seconds West 72.23 feet to a point, North 16 degrees 06 minutes 34 seconds East 33.82 feet to a point, North 59 degrees 09 minutes 21 seconds East 57.23 feet to a point, North 19 degrees 25 minutes 06 seconds East 68.97 feet to a point, South 89 degrees 14 minutes 44 seconds East 66.42 feet to a point, North 21 degrees 27 minutes 58 seconds East 53.83 feet to a point, North 38 degrees 48 minutes 09 seconds East 60.19 feet to a point, North 07 degrees 38 minutes 50 seconds East 107.44 feet to a point, North 24 degrees 41 minutes 42 seconds West 148.64 feet to a point and North 29 degrees 50 minutes 48 seconds West 34.78 feet to a point; thence North 48 degrees 47 minutes 46 seconds East 289.38 feet to an existing iron rod; thence south 46 degrees 25 minutes 26 seconds East 130.67 feet to an existing iron rod; thence North 32 degrees 16 minutes 04 seconds East 184.55 feet to an existing iron rod at a corner with W. R. Craven, Jr.; thence along Craven's line South 48 degrees 46 minutes 16 seconds East 224.27 feet to an existing iron pipe and North 43 degrees 39 minutes 17 seconds East 164.71 feet to the point and place of Beginning, containing 24.634 acres.

This description is in accordance with a survey entitled "Annexation Map for the City of Asheboro", dated October 6, 1997, prepared by Philip M. Henley, and designated as Job No. S-4303.

(b) From and after the effective date of this section, the real and personal property in the area described in subsection (a) of this section shall not be subject to taxes of the City of Asheboro.

Section 2. The following described territory is added to the corporate limits of the City of Asheboro:

BEGINNING at an existing iron pipe in the south right-of-way line of Pilots View Road (State Road #1197), said iron pipe being also located in the city limits line of the City of Asheboro; thence from said beginning point South 61 degrees 21 minutes 00 seconds East, along the south right-of-way line of Pilots View Road, 200.00 feet to a corner not set; thence South 22 degrees 05 minutes 00 seconds West 1,549.23 feet to a corner not set within the City of Asheboro property; thence

North 67 degrees 55 minutes 00 seconds West 771.17 feet to an existing iron pipe in the present city limits line; thence along the present city limits line, the following courses and distances: North 22 degrees 05 minutes 00 seconds East 1,638.00 feet to an existing iron pipe and South 61 degrees 21 minutes 00 seconds East 576.26 feet to the point and place of Beginning, containing 28.213 acres, more or less.

This description is in accordance with a survey entitled "Asheboro Municipal Airport Annexation Map", dated June 17, 1998, prepared by Jack R. Ragland, R. L. S., and designated as Job No. 1355.

Section 3. (a) G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area within the primary corporate limits of the annexing city."

(b) This section applies to the City of Asheboro only.

Section 4. This act is effective when it becomes law, except that Section 1 becomes effective November 6, 1997.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8/12/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDA & CS
Paul Gibbs	OSBM
CHRIS WILLIFORD	SPC
Doug Rogers	NCDOT
Jim Long	DCAFI
Ed Regan	N.C.A.C.C.
Leon McKillop	Moore-Van Allen
Thomas Hamlin	Hamlin Con.
Nancy Bradley	NCCBA
Lawrence Davis	Womble Carlyle
Mark Glaser	Capitol Group

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8/12/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D R Bean	The Capitol Group
K. McGuire	NC Ctr for NPs
Doug Miskuw	IBM
Willa Riddell	DOR

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, August 12, 1998

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

FAVORABLE

H.B. **1275** Statesville Airport Lease Length
Sequential Referral: None
Recommended Referral: None

H.B. **1602** Rowland Charter Revision
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

(Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, October 6, 1998

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

FAVORABLE

H.B.(CS #2)**1629** Asheboro Annexations
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: NOTE: Taken up in Senate Finance on 8-12-98

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, October 27, 1998

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

FAVORABLE

H.B. **1401** Pleasant Garden Boundaries
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up in Committee on 8-12-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

August 19, 1998

12 NOON - ROOM 544

HB 55 - Purple Heart Special Plates - Rep. Warner

HB 1248 - Exempt Tobacco Assistance Payments - Rep. Baker

HB 1544 - Raise Court Fees - Rep. Gardner

HB 1617 - Poultry Composting Tax Credit - Rep. Mitchell

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 19, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Wednesday, August 19, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 17 committee members present. Senator Kerr introduced the pages: Terry Gore from Fayetteville, sponsored by Senator Rand, and Meredith Oakes from Raleigh, sponsored by Senator Miller.

H.B. 55 - Purple Heart Special Plates.

This bill was explained by Representative Rayfield. Senator Rand moved for the adoption of a Committee Substitute and the motion passed. Ms. Cindy Avrette, Staff Attorney, explained the Committee Sub. Senator Rand sent forth an Amendment adding the Bronze Star to the bill. Senator Phillips sent forth an Amendment which added the Silver Star. After discussion, Senator Rand withdrew his motion and a new Amendment adding both Bronze and Silver Stars was sent forth by Senators Rand, Phillips and Cochrane, and on motion, the Amendment was adopted. Ms. Ruth Sappie, representing DOT, and Ms. Carol Howard, representing DMV, were recognized and stated this legislation could be handled by the Department. On motion by Senator Webster, this Committee Sub, as amended, was given a Favorable Report. Copy of Bill (CS # 2), new Committee Sub, Amendments and Explanation included in the Minutes.

H.B. 1248 - Exempt Tobacco Assistance Payments.

Representative Baker was recognized to explain his bill. Senator Purcell moved for the adoption of a Committee Substitute and the motion passed. Ms. Cindy Avrette, Staff Attorney, gave an explanation of the Committee Sub. At Senator Rand's request, the bill was temporarily displaced.

H.B. 1617 - Poultry Composting Tax Credit.

Senator Albertson explained this bill for the bill sponsor, Representative Mitchell. Glenn Jernigan was recognized and spoke in favor of the bill. David S. McLeod, Director of Legal Affairs for the NC Department of Agriculture, was recognized and spoke in favor of the bill. Senator Albertson moved for a Favorable Report and the motion carried. Copy of H.B. 1617 (CS # 2), Explanation and Fiscal Note included in the Minutes.

Ms. Paula Gupton, representing NC Farm Bureau, was recognized and spoke in favor of H.B. 1248. Senator Rand sent forth an Amendment on H.B. 1248 and Senator McDaniel moved for the adoption. Motion carried. On motion by Senator Webster, the Committee Sub was given a Favorable Report as amended. Copy of Bill (CS # 2), new Committee Sub and Explanation included in the Minutes. Copy of Amendment not available.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

HB 1544 not heard in committee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 55
Committee Substitute Favorable 3/17/97
Committee Substitute #2 Favorable 4/14/97

Short Title: Purple Heart/Silver Star Plates. (Public)

Sponsors:

Referred to:

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT SPECIAL PURPLE HEART AWARD REGISTRATION PLATES SHALL BE ISSUED WITHOUT AN ADDITIONAL FEE, TO PROVIDE THAT SURVIVING SPOUSES OF PURPLE HEART PLATEHOLDERS MAY CONTINUE TO BE ISSUED THOSE PLATES, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP A SPECIAL MOTOR VEHICLE PLATE FOR RECIPIENTS OF THE SILVER STAR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(22) reads as rewritten:

"(22) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. Also issuable to the surviving spouse of a person who had a Purple Heart plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry. The plate shall bear the phrase 'Purple Heart Veteran, Combat Wounded' and the letters 'PH'."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(22a1) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words 'Silver Star'."

Section 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Special Olympics	$25.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 55
Committee Substitute Favorable 3/17/97
Committee Substitute #2 Favorable 4/14/97
Proposed Senate Committee Substitute H55-PCS2418-RB

Short Title: No Fee for Purple Heart Plates. (Public)

Sponsors:

Referred to:

February 5, 1997

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE FEE FOR PURPLE HEART REGISTRATION PLATES, TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO REDESIGN THE PURPLE HEART PLATE, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL REGISTRATION PLATE TO A RECIPIENT OF THE SILVER STAR AND TO A RECIPIENT OF THE BRONZE STAR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00

Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 2. The Division of Motor Vehicles shall complete a redesign of the Purple Heart special license plate by January 1, 1999. The Division shall consult interested groups and other state divisions of motor vehicles about the design to ensure that the plate accurately reflects the appearance of the Purple Heart award. The Division shall use funds already appropriated to the Division to fund the design.

Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(3a) Bronze Star Recipient. -- Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star"."

Section 4. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(39a) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star"."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 55

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

H55-ARB-8/18 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title [YES]
H55-CSRB-8/19

Senator Rand

moves to amend the bill on page 1, lines 2 and 3, by deleting "PLATES AND" and substituting "PLATES,";

and on page 1, line 4, by inserting immediately before the period the following:
", AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL REGISTRATION PLATE TO A RECIPIENT OF THE BRONZE STAR.";

and on page 2, line 15, by rewriting the line to read:
"Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:
"(3a) Bronze Star. -- Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star"."
Section 4. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Phillips

moves to amend the bill on page 1, line 7

(✓) WHICH CHANGES THE TITLE

by Amendment #1, by inserting the following before the period: "AND TO A RECIPIENT OF THE SILVER STAR";

and on page 1, line 15, of Amendment #1, by rewriting the line to read:

"Section 4. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(39a) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star."

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

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 55:
No Fee for Purple Heart Plates (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 19, 1998
SPONSOR: Representative Warner

The proposed Senate Finance Committee Substitute for **House Bill 55** does two things:

- It removes the $10.00 additional fee to obtain a Purple Heart special registration plate.
- It directs the Division of Motor Vehicles to redesign the Purple Heart registration plate by January 1, 1999.

The current fee for this special registration plate, as well as other special registration plates, is the regular motor vehicle registration plate fee plus an additional $10.00. The only exception to this rule is the special registration plate issuable to active members of the national guard – this plate may be obtained by paying only the regular motor vehicle registration plate fee. There are 3 plates that are issued free of both the regular motor vehicle registration plate fee and the additional special plate fee: the Congressional Medal of Honor plate, 100% disabled veteran plate, and ex-prisoner of war plate. There are also some special registration plates that cost more than the additional $10 fee. These plates are the ones designed to raise money for a particular group.

The General Assembly has authorized the Division of Motor Vehicles to issue special registration plates for several different military decorations and for persons serving in the armed forces. With the exceptions noted in the paragraph above, all of the persons who elect to have one of these special plates must pay the $10 additional fee:

- Combat Veteran. – Issuable to a veteran of the armed forces who served in a combat zone.
- Disabled Veteran. – Issuable to a veteran who suffered a 100% service-connected disability.
- Legion of Valor. – Issuable to a recipient of one of the following military decorations: The Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The Congressional Medal of Honor is the highest decoration awarded in the armed forces. The service crosses are the second highest decoration awarded in the armed forces.

- Partially Disabled Veteran. – Issuable to a veteran who suffered a service connected disability of less than 100%.
- Pearl Harbor Survivor. – Issuable to a veteran of the armed forces who was present at and survived the attack on Pearl Harbor.
- Prisoner of War. – Issuable to an ex-Prisoner of War.
- Purple Heart. -- Awarded to persons serving in the armed forces who are wounded in action against the enemy.
- Vietnam Veteran. – Issuable to a veteran of the armed forces who served in Vietnam.

In all cases, $10.00 of the additional fee charged for special registration plates is credited to the Special Registration Plate Account. This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

Percentage	Purpose
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1617
Committee Substitute Favorable 6/30/98
Committee Substitute #2 Favorable 7/28/98

Short Title: Poultry Composting Tax Credit. (Public)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES TO CORPORATE ENTITIES AND TO REMOVE THE SUNSET FOR THE INDIVIDUAL INCOME TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.43. Credit for construction of poultry composting facility.**

A taxpayer who constructs in this State a poultry composting facility, as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced, is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 2. G.S. 105-151.25(a) reads as rewritten:

"(a) Credit. -- A taxpayer ~~or Subchapter S corporation~~ who constructs in this State a poultry composting facility as defined in G. S. 106-549.51 for the composting

of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 3. Section 4 of Chapter 543 of the 1995 Session Laws reads as rewritten:

"Sec. 4. Section 1 of this act becomes effective for taxable years beginning on or after January 1, ~~1995, and expires for taxable years beginning on or after January 1, 1998.~~ 1995. The remainder of this act is effective upon ratification."

Section 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1617 (3rd Ed):
Poultry Composting Tax Credit

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 18, 1998
SPONSOR: Representative Mitchell

House Bill 1617 (3rd Edition) removes the sunset from the individual income tax credit for constructing a facility in this State for the composting of poultry carcasses resulting from commercial poultry operations. The current credit, which expires this year, is available only to individuals and shareholders in Subchapter S corporations. The bill expands the credit to C corporations. The bill also removes the sunset language from the 1995 Session Laws, which created the tax credit. The bill has been in House Agriculture and House Finance and passed third reading in the House on August 5, 1998.

The amount of the credit allowed is 25% of the installation, equipment, and materials costs of building the facility, not to exceed $1,000. The credit does not apply to costs paid with funds provided to the taxpayer by a State or federal agency. The amount of the credit allowed cannot exceed the amount of tax imposed for the taxable year and any unused credit may not be carried forward to succeeding taxable years.

A poultry composting facility is a structure or an enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food. Every person that is engaged in raising poultry for commercial purposes and has a flock of at least 200 fowl is required to dispose of the poultry carcasses in a pit, an incinerator, or a poultry composting facility that has been approved by the Department of Agriculture and Consumer Services. In the poultry business, the grower of a bird is often not the owner of the bird. The burden of disposing of poultry mortalities is usually on the grower of the bird.

The purpose of the credit is to encourage people who raise turkeys, chickens, or other poultry to compost the dead poultry rather than burn it or put it in a pit. By composting the poultry carcasses, the by-product can be converted into a useful product.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1617 (Proposed Committee Substitute)

SHORT TITLE: Poultry Composting Tax Credit

SPONSOR(S): Representatives Mitchell, Allred, Davis, and Hackney

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	($30,000)	($30,000)	($30,000)	($30,000)	($30,000)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

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

BILL SUMMARY: This bill extends income tax credit for poultry composting facilities to corporate entities and removes the sunset for the individual income tax credit.

BACKGROUND: This tax credit is available for individuals and S corporations who construct facilities in North Carolina for composting whole, unprocessed poultry carcasses from commercial poultry operations. The credit is equal to 25% of the installation, materials, and equipment costs of construction paid during the taxable year, but not to exceed $1,000 for any single installation. The credit is not refundable and there is no carry-forward of the credit. The credit does not apply to costs paid with funds provided by a state or federal agency. The credit expires in the 1998 tax year.

ASSUMPTIONS AND METHODOLOGY: Before constructing a poultry composting facility, the grower must receive a permit from the Veterinary Division in the Department of Agriculture and Consumer Services. Based on permit information, the number of facilities constructed since 1990 is as follows:

1990 (began in August)	12
1991	63
1992	132
1993	133
1994	85
1995	136
1996	61
1997	33
1998 (by July 27)	20

The numbers above show a decline in composting facilities since 1995. Dr. Thomas A. Carter, Extension Poultry Specialist at North Carolina State University, attributes this decline to poultry growers' increased use of incineration. Due to incineration and other technological changes, Dr. Carter believes the number of composting facilities will average 30 per year over the next five years.

The cost to continue this credit is approximately $30,000 per year. As noted above, there will be 30 composting facilities constructed each year. Since the cost of a compost facility is between $5,000 and $10,000 per installation, each facility will qualify for the maximum $1,000 credit. This fiscal note assumes each grower has enough tax liability to fully use each tax credit. Since there is no data on the tax status of the permit holders, this note contains the total cost for both individual and corporate taxpayers.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: July 27, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/24/98

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, TOBACCO WAREHOUSE OWNERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for:

a. Loss of tobacco quotas.

b. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.
c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry.
d. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/24/98
Proposed Senate Committee Substitute H1248-PCS9021-RB

Short Title: Tobacco Settlements Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA CITIZENS FROM LOSSES DUE TO FEDERAL TOBACCO LEGISLATION OR TOBACCO LITIGATION AND TO PROVIDE THAT FUNDS RECEIVED DUE TO SETTLEMENTS AND RELATED CONGRESSIONAL LEGISLATION SHALL BE SPENT ONLY PURSUANT TO APPROPRIATION BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

(1) In June 1997, a tentative settlement was reached in litigation between United States cigarette manufacturers and the attorneys general of 40 states.

(2) Dozens of bills were introduced in Congress dealing with this settlement, and several of those bills would have provided financial assistance to tobacco farmers and others who depend on tobacco for their livelihoods.

(3) Some of these proposed bills would also have provided for block grants and other funds for states to use for related purposes.

(4) Congress is unlikely to enact legislation on this subject during 1998.

(5) Tobacco litigation and federal legislation providing for settlement of the litigation have the potential to affect the interests of tobacco farmers and others who depend on tobacco for their livelihoods.

Section 2. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-16.4. Settlement Reserve Fund.**

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless prohibited by court order, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement or final order or judgment of a court shall be credited to the Settlement Reserve Fund."

Section 3. It is the intent of the General Assembly that federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be used pursuant to specific appropriation for healthcare costs, tobacco transition assistance, and other purposes related to protecting the interest of North Carolina tobacco farmers, allotment holders, workers (including agricultural, commercial, and manufacturing workers), and other North Carolina citizens.

Section 4. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-2.5. Attorney General to report payment of public monies pursuant to settlement agreements and final court orders.**

(a) The Attorney General shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Committees of the Senate and House of Representatives on any payments received pursuant to a settlement agreement or final order or judgment of a court and credited to the Settlement Reserve Fund in accordance with G.S. 143-16.4. The Attorney General shall also report on the terms or conditions of payment set forth in the agreement or order. The Attorney General shall submit a written report to the Fiscal Research Division of the General Assembly.

(b) This section applies only to executed settlement agreements and final orders or judgments of a court and does not affect the authority of the Attorney General to negotiate the settlement of cases in which the State or a State department, agency, institution, or officer is a party."

Section 5. It is the intent of the General Assembly to monitor the progress of federal tobacco settlement legislation and to enact appropriate income tax exemptions for financial assistance payments that may later be enacted by Congress for tobacco farmers and for others who depend on tobacco for their livelihoods. In addition, it is the intent of the General Assembly to monitor the status of tobacco

litigation in this State and other states and to act to protect the interests of North Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods.

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

EXPLANATION OF HOUSE BILL 1248 (PCS):
Tobacco Settlements Payments

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 18, 1998
SPONSOR: Representative Baker

House Bill 1248 makes the following three changes relating to possible federal legislation that may be enacted as part of a tobacco litigation settlement. The bill is effective when it becomes law.

1. It provides legislative findings and statements of intent regarding potential federal financial assistance to farmers and others who depend on tobacco for their livelihood.
2. It provides that any block grants and other federal payments provided to North Carolina by Congress as part of the tobacco settlement may be spent only by appropriation of the General Assembly
3. It provides that any significant court settlement payments or payments pursuant to litigation on any subject may be spent only by appropriation of the General Assembly.

In June 1997, United States tobacco companies reached a tentative settlement of litigation initiated by the attorneys general of 40 states. The settlement would have required the companies to pay damages and would have limited their future liability. In response to the tentative settlement, many bills were introduced in Congress to establish the detailed rights and obligations of the parties. The legislation would have profound effects on the tobacco industry at all levels. Elimination of the federal tobacco program was proposed, and several of the bills proposed financial assistance to tobacco farmers, tobacco quota owners, tobacco workers, and others involved in the tobacco industry. This financial assistance would be designed to replace income these farmers and others might lose due to changes in the tobacco industry. In addition, some of the federal bills proposed to distribute funds to States in the form of block grants or appropriations. Federal tobacco settlement legislation seemed likely as of May 1998 but has since stalled.

Section 1 of the proposed committee substitute sets out the above facts as findings of the General Assembly. These findings form the basis for the remainder of the bill.

Section 2 of the bill establishes a restricted reserve in the General Fund called the Settlement Reserve Fund. Monies in this reserve may be spent only by

specific appropriation of the General Assembly. The bill provides that, unless prohibited by federal law, any federal funds North Carolina receives pursuant to tobacco settlement legislation will be credited to the Settlement Reserve Fund. In addition, unless prohibited by court order, any funds received pursuant to a tobacco litigation settlement agreement will be credited to the Settlement Reserve Fund. These requirements will allow the General Assembly to control the expenditure of funds received pursuant to litigation settlements and court judgments.

Section 3 of the bill states that it is the intent of the General Assembly that any funds received pursuant to federal tobacco settlement legislation will be used for healthcare costs, tobacco transition assistance, and other purposes that will protect the interest of North Carolina farmers and other North Carolina citizens who depend on tobacco for their livelihood. The funds cannot be spent except pursuant to specific appropriation of the General Assembly. This section outlines the general plan for any federal tobacco funds received, but leaves the details to be worked out in a future appropriations bill.

Section 4 of the bill requires the Attorney General to keep the General Assembly informed of payments received under any litigation settlements or court judgments and credited to the Settlement Reserve Fund as provided in Section 3. This reporting requirement will provide the General Assembly the information it needs to design the specific appropriations of the funds credited to the reserve. Sections 3 and 4 of this bill are very similar to Section 18.7 of the House Budget bill, Senate Bill 1366, 5th Edition.

Section 5 of the bill states the General Assembly's intent to monitor the progress of federal tobacco settlement legislation and provide appropriate income tax exemptions for financial assistance payments to tobacco farmers and others who depend on tobacco for their livelihoods. It also states the intent of the General Assembly to monitor any tobacco litigation and to protect the interests of North Carolina citizens.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

AUGUST 19, 1998 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	WCSR
Carol Howard	DOR
Deborah Bryan	ALAMC
M-H Osborne	AOC
NANCY POMERANZ	DOR
Jim Blackburn	N.C. Association of County Commissioners (Friend of Carol's)
Joe McClure	TDA
JOHN Cimmino	
BILL SCOGGIN	NC Bar Assoc.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, August 20, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)**1617** Poultry Composting Tax Credit.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**55** Purple Heart/Silver Star Plates.
Draft Number: PCS2418
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B.(CS #2)**1248** Tobacco Settlements Payments.
Draft Number: PCS9021
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: Aug 19 meeting HB 55 1248 1617

AGENDA

SENATE FINANCE COMMITTEE MEETING

Tuesday, September 1, 1998

12:00 NOON - ROOM 544 LOB

MEETING CALLED TO ORDER - SENATOR HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- **HB 577 - Forester Registration - Rep. Weatherly**
- **HB 1082 - Native American Special Plates - Rep. Sutton**
- **HB 1318 - Modify Nonresident Withholding - Rep. Neely**
- **HB 1489 - Local Tax Information/Refunds - Rep. Neely**
- **HB 1502 - UNC Nonappropriated Capital Projects - Rep. Gray**
- **HB 1518 - Eagle Scout Special Plates - Rep. Eddins**
- **HB 1533 - Halifax/Regional Airport - Rep. Crawford**

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

TUESDAY, SEPTEMBER 1, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Tuesday, September 1, 1998 at 12:00 Noon in Room 544 LOB. There were 20 Members of the Committee present. Senator David Hoyle, Co-chairman, called the Meeting to order and introduced the Pages, they were: Sara Wells, sponsored by Senator Wellons, Graham Worth, sponsored by Senator Reeves and Nhat Nguyer, sponsored by Senator Carrington.

H. B. 1082 - Native American Special Plates

Representative Sutton explained the proposed committee substitute bill. Senator Weinstein moved for adoption of proposed committee substitute bill for the purpose of discussion, motion passed. Senator Weinstein moved for a "favorable" report of pcs, motion passed. (Copy of Proposed Committee Substitute Bill is included in Minutes).

H. B. 1518 - Eagle Scout Special Plates

Representative Eddins came to explain the bill. Senator Kerr moved for adoption of proposed committee substitute for the purpose of discussion, motion passed. Senator Wellons moved for a "favorable" report of pcs, motion passed. (Copy of Bill and Proposed Committee Substitute Bill, Explanation and Fiscal Note are included in Minutes).

H. B. 577 - Forester Registration

Representative John Weatherly came to explain the bill. After some questions on the bill, Senator Albertson moved for a "favorable" report. (Copy of Bill, Explanation and Fiscal Note are included in Minutes).

H. B. 1533 - Halifax/Regional Airport

Representative Crawford came to explain the bill. Senator Rand moved for a "favorable" report, motion passed. (Copy of Bill and Explanation are included in Minutes).

H. B. 1502 - UNC Nonappropriated Capital Projects

Representative Lyons Gray came to explain the bill. Senator McDaniel moved for a "favorable" report, motion passed. (Copy of Bill and Explanation are included in Minutes).

H. B. 1318 - Modify Nonresident Withholding

Representative Charles Neely came to explain the bill. Senator Rand moved for adoption of proposed committee substitute for the purpose of discussion, motion passed. After a full discussion of this bill, Senator Webster moved for a "favorable" report, motion passed. (Copy of Bill, Proposed Committee Substitute, Explanation and Fiscal Note are included in Minutes).

H. B. 1489 - Local Tax Information/Refunds

Representative Charles Neely came to explain the bill. Senator Dannelly moved for a "favorable" report, motion passed. (Copy of Bill, Explanation and Fiscal Note are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report is Attachment #2
Committee Report dated 9-2-98 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1082
Committee Substitute Favorable 5/21/97
Senate Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute H1082-PCS3184-LB2

Short Title: Native American Plates/Housing. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A NATIVE AMERICAN REGISTRATION PLATE, AND TO ALLOW AN INCREASE IN MEMBERS ON THE NORTH CAROLINA INDIAN HOUSING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Native American. -- Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed."

Section 2. G.S. 157-68 reads as rewritten:

"**§ 157-68. Commissioners of Authority.**

The Authority shall consist of not less than five nor more than ~~nine~~ 15 commissioners (the number to be set by the North Carolina State Commission of Indian Affairs) who shall be appointed by the Governor, after receiving nominations from the North Carolina State Commission of Indian Affairs. For each vacancy, the Governor must appoint one person from a list of two eligible persons so nominated. Commissioners shall be selected from the major groups of North Carolina Indians that elect members to the North Carolina State Commission of Indian Affairs under

G.S. 143B-407. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1518
Committee Substitute Favorable 6/18/98

Short Title: Eagle Scout Special Plates. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE EAGLE SCOUT SPECIAL REGISTRATION PLATES TO EAGLE SCOUTS OR THEIR PARENTS OR GUARDIANS AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SMALLER REGISTRATION PLATES FOR MOTORCYCLES AND MOTORCYCLE TRAILERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(3) American Legion. -- Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the

emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(4) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(5) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(6) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(7) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(8) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(9) Collegiate Insignia Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(10) Combat Veteran. -- Issuable to a veteran of the armed forces who served in a combat zone, or in waters adjacent to a combat zone,

during a period of war and who was separated from the armed forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(11) County Commissioner. -- Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(12) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(13) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division

may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(14) 82nd Airborne Division Association Member. -- Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(15) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(16) Future Farmers of America. -- Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(18) Historical Attraction Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(19) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(20) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(21) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(22) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(23) Magistrate. -- Issuable to a North Carolina magistrate. The plate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B.

(24) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(25) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(26) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(28) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(29) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(30) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(31) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on

Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(32) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(33) Prisoner of War. -- Issuable to the following:

a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(34) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(35) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(36) Register of Deeds. -- Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(37) Scenic Rivers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(38) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(39) Sheriff. -- Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves.

A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(40) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(41) Special Olympics. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(42) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(43) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(44) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(45) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(46) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(47) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(48) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(49) Veterans of Foreign Wars. -- Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the

VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Wildlife Resources. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina."

Section 2. G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and motorcycle trailers with suitably reduced size registration plates."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1518
Committee Substitute Favorable 6/18/98
PROPOSED SENATE FINANCE COMMITTEE SUBSTITUTE
H1518-CSRB-8/25

Short Title: Eagle Scout & Gold Award Special Plates. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE EAGLE SCOUT SPECIAL REGISTRATION PLATES TO EAGLE SCOUTS OR THEIR PARENTS OR GUARDIAN, TO ISSUE GIRL SCOUT GOLD AWARD SPECIAL REGISTRATION PLATES TO RECIPIENTS OF THE GIRL SCOUT GOLD AWARD OR THEIR PARENTS OR GUARDIAN, AND TO ISSUE SMALLER REGISTRATION PLATES FOR MOTORCYCLES AND MOTORCYCLE TRAILERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(16a) Girl Scout Gold Award recipient. -- Issuable to a young woman who has been certified as a Girl Scout Gold Award recipient by the Girl Scouts of the U.S.A., or to her parents or guardians. The plate shall bear the insignia of the Girl Scouts of the U.S.A. and shall bear the words "Girl Scout Gold Award". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 3. G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and motorcycle trailers with suitably reduced size registration plates."

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

EXPLANATION OF HOUSE BILL 1518:
Eagle and Gold Scout Special Plate (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 18, 1998
SPONSOR: Representative Eddins

The Proposed Senate Finance Committee Substitute for **House Bill 1518** does three things:

- It authorizes the issuance of a new Eagle Scout special license plate. (In House version of the bill)
- It authorizes the issuance of a new Gold Scout special license plate. (The proposed committee substitute adds this section to the bill)
- It authorizes a smaller registration plate for motorcycles and motor cycle trailers. (In House version of the bill)

Sections 1 and 2 would authorize the Division of Motor Vehicles to develop a special registration plate issuable to a person who has been certified as an Eagle Scout by the Boy Scouts of America or as a Gold Scout by the Girl Scouts of America. The plates could also be issued to the person's parent or guardian. The plates would depict the insignia of the Scouts and bear the words "Eagle Scout" and "Gold Scout", respectively. The Division would have to receive at least 300 applications of the plate before one could be issued .

The fee for the special registration plates would be the regular motor vehicle registration fee plus an additional $10.00. The additional $10.00 fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

Percentage	Purpose
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

Section 3 requires the Division to issue a smaller registration plate for motorcycles and motorcycle trailers. The current law does not specify what size a registration plate must be. It does specify what the plate must have displayed

on it and it requires that the plate be of sufficient size to be plainly readable from a distance of 100 feet during daylight. The plate must have a registration number displayed on it along with the name of the State of North Carolina, the year number for which it is issued, and, for a private passenger vehicle, the words "First in Flight".

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1518 PCS

SHORT TITLE: Eagle Scout Special Plates

SPONSOR(S): Representative Eddins

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$6000	$6000	$6000	$6000	$6000
EXPENDITURES	$1712				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles.

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

BILL SUMMARY: Sections 1 and 2 authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to individuals certified as Eagle Scouts or Gold Scouts, if at least 300 applications for such a plate are received. The Boy Scouts of America must certify the Eagle Scout standing. The Girl Scouts of America must certify the Gold Scout standing. Parents or guardians of certified scouts are also authorized to purchase the plates. The second part of the bill authorizes the division to issue smaller registration plates for motorcycles and motorcycle trailers.

ASSUMPTIONS AND METHODOLOGY: The ten Boy Scout Councils in North Carolina report that, combined, they award approximately 1,100 Eagle Scouts rankings per year. The Girl Scouts of America report that they award 2,500 Gold Scout awards per year, nationwide. They estimate that approximately 75 Gold Scouts are awarded annually through there seven councils in North Carolina, although there is no specific listing by state. Because there is no way to determine how many of the North Carolina Eagle Scouts and Gold Scouts will request the special plate, this fiscal note assumes the issuance of the minimum 300 license plates for each set of

scouts (Gold and Eagle Scouts) in FY 1998-99. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate (This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases). The total production cost for 300 basic plates is $856.00. As such, the total production cost associated with the bill is $1712.00 ($856.00 x 2 plates). Special Registration Plate Account funds will be used to cover this expense. In addition to the normal $20.00 registration fee every owner of a private passenger vehicle pays, there is a $10.00 fee for each specialized Eagle Scout plate. Funds from the $10.00 special plate fee are deposited in the Special Registration Plate Account. Assuming that 300 Eagle Scout plates and 300 Gold Scout plates were ordered, the total revenue to the Special Registration Plate Account will be $6000.

The Division of Motor Vehicles does not anticipate a significant fiscal impact to making smaller plates available for motorcycles and motorcycle trailers. The Division also indicates that there may be some production problems associated with personalizing the smaller plates.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps and Bob Weiss
APPROVED BY: Tom Covington
DATE: August 21, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 577
Committee Substitute Favorable 7/9/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/18/98

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.

EXPLANATION OF HOUSE BILL 577 (Third Edition):
Forester Registration

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 25, 1998
SPONSOR: Representative Weatherly

House Bill 577 requires mandatory registration of all foresters practicing in the State. Current law provides only for voluntary registration and makes it unlawful for any person who is not registered to use the title "registered forester". In addition, the bill raises the standards for foresters. The bill passed the House. The committee substitute before this Committee was given a favorable report by the Senate Committee on Agriculture and does the following: adds a definition for "forestry", changes the effective date from January 1, 1998 to January 1, 1999, and provides that foresters registered with the Board as of January 1, 1999 are exempt from taking the Board's revised exam and from meeting the experience requirements (6 or more years of forestry practice). In addition, the bill makes the following changes to Chapter 89B on Foresters:

1. Adds definitions for "forestry" and "urban forestry"

2. Allows the State Board of Registration for Foresters (a five-member Board appointed by the Governor) to set the fees subject to statutory maximums. The bill also increases the fees as follows:

FEES	CURRENT AMOUNT	PROPOSED AMOUNT
Application fee	$15.00	not to exceed $50.00
Registration fee	$20.00	not to exceed $40.00
Annual renewal fee	$20.00	not to exceed $50.00
Replacement fee	$5.00	same
Reexamination fee	$15.00	not to exceed $50.00

Under current law a renewal of an expired registration requires a $20.00 fee plus $1.00 per month from the date of expiration not to exceed $20.00. The bill requires payment of the registration fee plus 1/12 of the annual renewal fee per calendar month not to exceed the renewal fee.

3. Under current law, an applicant for registration must (1) have either a bachelors or higher degree in a forestry curriculum and two years of experience, or (2) pass an exam that shows knowledge approximating that obtained through graduation from a four-year forestry curriculum and five years

of experience.. The bill requires an applicant to pass a comprehensive written exam. The bill also increases the 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 Board 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 completion of the senior year is the equivalent of three years of experience.

4. The bill allows registration of an applicant who (1) has practiced "urban forestry" for six years prior to January 1, 1999, (2) is a North Carolina resident, (3) applies to the Board before June 30, 1999, for registration and (4) submits a sworn affidavit showing experience and education equivalent to a forester. Urban forestry is the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

The bill also allows registration of an applicant who was registered in good standing as a registered forester with the Board as of January 1, 1999.

5. Allows 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 exam or gained the two years of forestry experience.

6. Allows the Board to limit an applicant to three attempts to take and pass the exam.

7. Adds a continuing education requirement for registered foresters not to exceed 12 hours per year.

8. Requires a consulting forester to file annually with the Board an affidavit of compliance with the Chapter requirements. A consulting forester is allowed to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the public on a fee, contractual, or contingency basis.

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 577 (Third Edition)

SHORT TITLE: Forester Registration

SPONSOR(S): Rep. Weatherly, et al

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Board Operating Fund		$41,400	$43,650	$45,900	$48,150
EXPENDITURES					
Board Operating Fund		NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Registration for Foresters

EFFECTIVE DATE: The act is effective January 1, 1999

BILL SUMMARY: The bill strengthens the registration requirements for foresters. For example, all applicants will be required to take a comprehensive written exam and the Board of Registration for Foresters may require all licensees to take 12 hours of continuing education courses each year. The Board also may increase the fees charged for applications, exams and annual registration.

ASSUMPTIONS AND METHODOLOGY:
HB 577 permits the Board of Registration for Foresters to increase the fee for applications, exams and certificates of registration to the following amounts:

	Current Fee	HB 577 Maximum Fee
Renewal of Registration	$20	$50
Application for Registration	$15	$50
Examination	$15	$50
New Registration	$20	$40

According to the Board of Registration for Foresters, there are 975 registered foresters as of August 1998 (42 are late with their renewal but are counted in this number). These foresters renew their license each July upon payment of a $20 fee. Since HB 577 will not allow the Board to raise this fee until after January 1, 1999, there will be no revenue impact until FY 1999-00.

Approximately 75 new foresters are registered each year. Those requesting registration currently pay a $15 application fee and a $20 fee for a certificate of registration. For those without a college degree from an accredited forestry school, the Board requires an applicant to pay the $15 application fee and pay an additional $15 to take a comprehensive written exam. Currently, about 75 persons take the exam each year. If HB 577 passes, all applicants for registration will have to take the written exam that is given twice a year. Under the proposed bill, the Board estimates that 120 persons will sit for the exam each year and that 75 will pass. If the applicants pass the exam, they then pay for a certificate of registration.

	FY 98-99	**FY 99-00**	**FY 00-01**	**FY 01-02**	**FY 02-03**
Renewal	975	1050	1125	1200	1275
Applications	120	120	120	120	120
Exams	120	120	120	120	120
New	75	75	75	75	75

This note assumes that no fee increase will make it through the rule making process in time for the 1998-99 fiscal year, thus additional revenue from fee increases on new applicants will not be realized until FY 1999-00. The chart below illustrates the amount of additional revenue that could be earned if the Board imposed the highest fees allowed by HB 577 beginning in FY 1999-00.

	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Renewal		$ 31,500	$ 33,750	$ 36,000	$ 38,250
Applications		$ 4,200	$ 4,200	$ 4,200	$ 4,200
Exams		$ 4,200	$ 4,200	$ 4,200	$ 4,200
New		$ 1,500	$ 1,500	$ 1,500	$ 1,500
Total		**$ 41,400**	**$ 43,650**	**$ 45,900**	**$ 48,150**

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 25, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1533
Committee Substitute Favorable 8/13/98

Short Title: Halifax Regional Airport. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF HALIFAX, THE COUNTY OF NORTHAMPTON, AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF REGIONAL AIRPORT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of S.L. 1997-275 reads as rewritten:

"Section 1. There is hereby created the '~~Halifax-Roanoke Rapids~~ Halifax Regional Airport Authority' (for brevity hereinafter referred to as the 'Airport Authority'), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly. For purposes of this act the word 'City' when used alone shall mean the City of Roanoke Rapids and the word 'County' when used alone shall mean either Halifax County or Northampton County."

Section 2. Section 2 of S.L. 1997-275 reads as rewritten:

"Section 2. The Airport Authority shall consist of ~~seven~~ nine members, ~~three~~ two of whom shall be appointed to staggered three-year terms by the Roanoke Rapids City ~~Council~~ Council, two of whom shall be appointed to staggered three-year terms by the Northampton County Board of Commissioners, ~~and three~~ four of whom shall be appointed to staggered three-year terms by the Halifax County Board of ~~Commissioners~~ Commissioners, and one of whom shall be appointed by the other ~~six~~ eight members of the Airport Authority. The members appointed by the Roanoke

Rapids City Council shall be qualified voters of the City of Roanoke Rapids, the members appointed by the Northampton County Board of Commissioners shall be qualified voters of the County of Northampton, and the members appointed by the Halifax County Board of Commissioners ~~and the Airport Authority~~ shall be qualified voters of the County of Halifax. Each member appointed from Halifax County shall take and subscribe before the Clerk of Superior Court of Halifax County an oath of ~~office and~~ office. Each member appointed from Northampton County shall take and subscribe before the Clerk of Superior Court of Northampton County an oath of office. They shall file the same with the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council. Membership on the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

Section 3. Section 3 of S.L. 1997-275 reads as rewritten:

"Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority ~~shall~~ may receive compensation, per diem, or otherwise as the Roanoke Rapids City ~~Council or~~ Council, the Halifax County Board of ~~Commissioners~~ Commissioners, or the Northampton County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance."

Section 4. Subsection (a) of Section 4 of S.L. 1997-275 reads as rewritten:

"(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the City of Roanoke ~~Rapids~~ Rapids, the County of Northampton, or the County of Halifax.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Roanoke ~~Rapids~~ Rapids, the County of Northampton, or the County of Halifax.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will."

Section 5. Section 8 of S.L. 1997-275 reads as rewritten:

"Section 8. The Airport Authority shall make an annual report to the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Halifax ~~County~~ County, Northampton County, or the City of Roanoke Rapids, or any subdivision thereof, or to impose any obligation on Halifax ~~County~~ County, Northampton County, or the City of Roanoke Rapids, or any of their subdivisions, except when that power is expressly granted by statute."

Section 6. Section 9 of S.L. 1997-275 reads as rewritten:

"Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Halifax ~~County~~ County, Northampton County, and the City of Roanoke Rapids to control, regulate, and provide for the development of aviation in Halifax ~~County.~~ County and Northampton County."

Section 7. Section 12 of S.L. 1997-275 reads as rewritten:

"Section 12. The Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council."

Section 8. Section 15 of S.L. 1997-275 reads as rewritten:

"Section 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council, and nothing in this act shall require the Board of Commissioners or City Council to make the initial appointments. It is the intent of this act to enable but not to require the formation of the ~~Halifax-Roanoke Rapids~~ Halifax Regional Airport Authority."

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

EXPLANATION OF HOUSE BILL 1533 (2nd Edition: *Halifax Regional Airport*

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 25, 1998
SPONSOR: Representative Crawford

House Bill 1533 passed the House on August 18, 1998. The bill amends Chapter 275 of the 1997 Session Laws, which created the Halifax-Roanoke Rapids Airport Authority. The bill makes the following changes to Session Law 1997, Chapter 275:

Section 1 changes the name of the Authority from Halifax-Roanoke Rapids Airport Authority to Halifax Regional Airport Authority and clarifies that the act applies to the city of Roanoke Rapids, Halifax County and Northampton County.

Section 2 increases the membership of the Authority from seven to nine members, including two members appointed by the Roanoke Rapids City Council, two appointed by the Northampton Board of Commissioners, four appointed by the Halifax County Board of Commissioners, and one appointed by the other eight members.

Section 3 adds Northampton County Board of Commissioners to the list of entities that may determine the compensation of the Authority members.

Section 4 adds Northampton County as one of the entities sharing powers with the Authority.

Section 5 adds the Northampton County Board of Commissioners as one of the entities to which the Authority shall make an annual report and adds that the Authority may not pledge the credit of or impose any obligation on Northampton County.

Section 6 adds Northampton County Board of Commissioners to the entities that may delegate their powers to the Authority and provides that the Authority, Halifax County, Northampton County, and Roanoke Rapids have concurrent rights to control, regulate, and provide for the development of aviation in Halifax County and Northampton County.

Section 7 adds the Northampton County Board of Commissioners to the entities that may appropriate funds to carry out the act.

Section 8 provides that the Authority is not effective until the members have been appointed and that the intent of the act is to enable but not to require the formation of the Halifax Regional Airport Authority. The bill adds the Northampton County Board of Commissioner to the list of entities that may appoint the Authority members.

Section 9 makes the act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1502*
Committee Substitute Favorable 7/29/98

Short Title: UNC Nonappropriated Cap. Projects. (Public)

Sponsors:

Referred to:

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. Appalachian State University	
Renovation of Welborn Cafeteria	$6,159,700
2. East Carolina University	
West End Dining Hall	7,410,300
3. North Carolina A & T State University	
Residence Hall Improvements	5,000,100

4. North Carolina State University	
Centennial Campus Buildings, Improvements for Tenants Use	2,862,600
5. The University of North Carolina at Chapel Hill	
Medical Biomolecular Research Building, Phase II	30,045,500
Renovations and Addition to the Frank Porter Graham Student Union	13,287,300
Addition to Beard Hall	8,414,200
Institute of Government Parking Deck	1,548,500
6. The University of North Carolina at Charlotte	
Addition to the Barnhardt Student Activity Center	5,772,800
7. The University of North Carolina at Wilmington	
Improvements to Athletic Facilities	4,481,600
8. Western Carolina University	
Work Force Development Center	7,499,800.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

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

House Bill 1502: UNC Non-Appropriated Capital Project Authorizations

Campus	Project	Amount	Effect of Debt on Students	Increase in Operating Costs	Source of Operating Costs	Effect of Operations on Students
Appalachian State	Renovate Welborn Cafeteria	$6,159,700	none	none	Dining system receipts	none
East Carolina	West End Dining Hall	$7,410,300	none	$125,000	Dining system receipts-paid by food servicecontractor	none
NC A&T State	Residence Hall Improvements	$5,000,100	none	none	Dormitory rentals	none
NC State	Centennial Campus Buildings: Improvements for Tenants Use	$2,862,600	none	Unknown	Tenant rental payments	none
UNC-Chapel Hill	Medical Biomolecular Research Building: Phase II	$30,045,500	none	$1,859,600	General Fund appropriations	none
UNC-Chapel Hill	Renovation and Addition to Frank P. Graham Student Center	$13,287,300	$60 increase in debt service fee annually	$331,400	Student Activities Fee	$5 annual increase in fees
UNC-Chapel Hill	Addition to Beard Hall	$8,414,200	none	$154,300	General Fund appropriations	none
UNC-Chapel Hill	Parking Deck-Institute of Government	$1,548,500	none	$88,000	Parking receipts	none
UNC-Charlotte	Addition to Barnhardt Student Activity Center	$5,772,800	none	$52,500	Student fees	none anticipated
UNC-Wilmington	Improvements to Athletic Facilities	$4,481,600	none	$62,990	Non-state funds	none
Western Carolina	Work Force Development Center	$7,499,800	none	$378,000	General Fund appropriations	none
Total		$92,482,400		$3,051,790 $2,391,900 (General Fund)		

Authorization of Self-Liquidating Capital Improvements Projects

It is recommended that the Board approve eleven self-liquidating capital improvements projects totaling $92,482,400 at eight institutions. The projects would then be forwarded to the General Assembly for authorization during the 1998 Session.

Appalachian State University

Renovation of Welborn Cafeteria, $6,159,700

The project would provide for the renovation of Welborn Cafeteria, the principal student dining facility on campus. The original facility was constructed in 1925 with additions completed in 1965 and 1988. The project proposes to renovate the 30,555 square feet in the original facility and to provide new heating, ventilating, cooling, plumbing, and electrical systems. The original facility contains the central kitchen and two main dining rooms which seat a total of 900 people. The project further provides for asbestos abatement, re-roofing, ADA improvements, and exterior renovations. The University proposes to finance the project through the sale of revenue bonds to be retired from dining system receipts.

East Carolina University

West End Dining Hall, $7,410,300

The project would provide for the construction of a 32,950 square foot dining hall with seating for 600 people. The facility would be located on the main academic campus near five university residence halls as well as a privately owned student condominium complex. The project would be financed through the sale of revenue bonds to be retired from dining receipts.

North Carolina A&T State University

Residence Hall Improvements, $5,000,100

The University has employed the firm of Hayes, Seay, Mattern & Mattern to conduct a study and make recommendations concerning improvements to campus residence halls. The firm has identified the need to invest in excess of $20 million in the housing system to perform all needed renovations. The University requests to proceed with improvements totaling $5,000,100 in eleven residence halls to address the most immediate needs including building code violations, life safety needs, roofing needs, sprinkler systems, electrical upgrades, and plumbing needs. The University proposes to finance the project through the sale of revenue bonds to be retired from housing system receipts.

North Carolina State University

Centennial Campus Buildings, Improvements for Tenants Use, $2,862,600

The project would provide for the design and construction of improvements to facilities on the Centennial Campus to meet specific needs of the tenants that occupy the facilities. The improvements would be financed through the sale of revenue bonds to be retired from rents charged to building occupants.

The University of North Carolina at Chapel Hill

Medical Biomolecular Research Building, Phase II, $30,045,500

Included in the *1997-99 Budget Request of the Board of Governors* is a request for $29,493,800 to provide funding for Phase I of the Medical Biomolecular Research Building. The General Assembly has previously appropriated $1,000,000 for planning this facility. The University now proposes to construct the second phase of the research facility at the same time as the first phase by adding three additional floors estimated to cost $30,045,500. The self-liquidating portion of the project would be financed through the sale of revenue bonds to be retired from overhead receipts.

Renovations and Addition to the Frank Porter Graham Student Union, $13,287,300

The Frank Porter Graham Student Union was completed in 1968 with an addition that was constructed in 1977. The project proposes to construct an addition of 36,120 square feet to provide space for student organizational offices, meeting rooms, and a variety of activity and service spaces. The existing 118,255 square foot building would be completely renovated. The project would be financed through the sale of revenue bonds to be retired from a new debt service fee of approximately $60.00.

Addition to Beard Hall, $8,414,200

The General Assembly has appropriated $9,824,600 to provide an addition to Beard Hall to accommodate growth in the School of Pharmacy. The University now proposes to expand the addition by 22,000 square feet to provide more classroom and laboratory space. The proposed project further provides approximately $1.5 million for additional fixed, movable, and audiovisual equipment. In addition, the cost estimate provides $1.5 million for the relocation of major steam and chilled water lines which must be moved before the addition can be constructed. The project would be financed through gifts to the University.

Institute of Government Parking Deck, $1,548,500

The project would provide for the construction of a 183-space, two-level parking deck on the west side of the Knapp Building. The deck is an integral part of the additions and renovations to the Knapp Building and is needed to provide adequate parking for students and visitors to the Institute of Government. The project would be financed through borrowing to be retired from parking system receipts.

The University of North Carolina at Charlotte

Addition to the Barnhardt Student Activity Center, $5,772,800

The project would provide for a 29,200 square foot addition to the north side of the Student Activity Center. The addition would contain weight training facilities, a practice basketball court, offices, and academic study hall space. The project would be financed from a combination of balances in institutional accounts and contributions.

The University of North Carolina at Wilmington

Improvements to Athletic Facilities, $4,481,600

The project would provide for improvements to several different athletic facilities throughout the UNC-Wilmington campus. First, the University proposes to construct a 10,000 square foot sports medicine complex with offices, conference rooms, classrooms, treatment facilities, and lockers/dressing rooms for six sports programs. Next, the University proposes to add 6,000 square feet and renovate 2,200 square feet in Nixon Annex, which houses the Director of Athletics. An addition of 1,500 square feet and the renovation of 2,200 square feet is proposed for use by the baseball program. In the softball stadium, the University proposes to construct two players' dugouts and a two-story press building. Within Green Track Stadium, the running track would be resurfaced and restrooms and locker rooms would be added. The University proposes to resurface the tennis courts and add bleachers, restrooms, and locker rooms. Within the soccer stadium, bleachers would be enclosed within a brick screen wall and restroom facilities would be added. The project further provides for air conditioning the natatorium. The project would be financed from private gifts.

Western Carolina University

Work Force Development Center, $7,499,800

The project would provide for the construction of a 31,400 square foot facility to be financed from Federal grants. The purpose of the Center is to contribute to a better-prepared, more highly skilled workforce for the mountain region of Western North Carolina by enhancing undergraduate and graduate education through the application of electronics technologies to the curricula. The Center will assist businesses in North Carolina, especially new, emerging, and small businesses in Western North Carolina, through training, credit and non-credit education, videoconferencing, and public-private partnerships for product or service development. The facility would contain classrooms, laboratories, computer rooms for 150 people, plastics and laser laboratories, television and radio studios, and a robotics research laboratory.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1318
Committee Substitute Favorable 6/3/98

Short Title: Modify Nonresident Withholding. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS AND TO INCREASE THE THRESHOLD REQUIREMENT FOR NONRESIDENT WITHHOLDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film or television program.

b. A nonresident entity that provides for the performance ~~of the following personal services~~ in this State for ~~compensation: services~~ compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film or television ~~program, or the construction or repair of a building or highway.~~ program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than ~~six hundred dollars ($600.00)~~ five thousand dollars ($5,000) during a calendar year shall deduct

and withhold from compensation paid to a contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 4. This act is effective retroactively as of January 1, 1998. Notwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1318
Committee Substitute Favorable 6/3/98
Proposed Senate Committee Substitute H1318-PCS4214-LCX

Short Title: Nonresident Tax Collection. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS, TO INCREASE THE THRESHOLD REQUIREMENT FOR NONRESIDENT WITHHOLDING, AND TO PROVIDE A MECHANISM TO ENHANCE COLLECTION OF TAXES FROM NONRESIDENTS ENGAGED IN CONSTRUCTION-RELATED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

b. A nonresident entity that provides for the performance ~~of the following personal services~~ in this State for ~~compensation: services~~ compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a ~~film~~ film, radio, or television ~~program, or the construction or repair of a building or highway.~~ program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. G.S. 105-163.3(a), as amended by S.L. 1998-98, reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than ~~six hundred dollars ($600.00)~~ one thousand five hundred dollars ($1,500) during a calendar year shall deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 4. Article 1 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-10.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Reserved.

(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 5. Article 2 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-22.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.
(3) Reserved.
(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 6. Article 4 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-44.2. Licensing of nonresidents.**

(a) Definitions. -- The following definitions apply in this section:
(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
(2) Foreign corporation. -- Defined in G.S. 55-1-40.
(3) Reserved.
(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the

Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 7. Chapter 89C of the General Statutes is amended by adding a new section to read:

"**§ 89C-18.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Reserved.

(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 8. G.S. 150B-3(d) reads as rewritten:

"(d) This section does not apply to ~~revocations~~ the following:

(1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.

(2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2, or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt."

Section 9. G.S. 93B-14 reads as rewritten:

"**§ 93B-14. Information on applicants for licensure.**

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only ~~to~~ as follows:

(1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.

(2) To the Department of Revenue for the purpose of administering the State's tax laws."

Section 10. G.S. 87-10.1, as enacted by this act, reads as rewritten:

"**§ 87-10.1. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, ~~licensed by the Board~~ owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 11. G.S. 87-22.2, as enacted by this act, reads as rewritten:

"**§ 87-22.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, ~~licensed by the Board~~ owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 12. G.S. 87-44.2, as enacted by this act, reads as rewritten:

"**§ 87-44.2. Licensing of nonresidents.**

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

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
(5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and every foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual ~~licensed by the Board~~ or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 13. G.S. 89C-18.1, as enacted by this act, reads as rewritten:

"**§ 89C-18.1. Licensing of nonresidents.**

(a) Definitions. -- The following definitions apply in this section:
(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
(2) Foreign corporation. -- Defined in G.S. 55-1-40.
(3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
(5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual ~~licensed by the Board~~ or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 14. Sections 1 through 3 of this act are effective retroactively as of January 1, 1998. Notwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f). Sections 10 through 13 of this act become effective July 1, 2000. The remainder of this act becomes effective July 1, 1999.

EXPLANATION OF HOUSE BILL 1318 (PCS):
Nonresident Tax Collection

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 25, 1998
SPONSOR: Representative Neely.

House Bill 1318 was a recommendation of the Revenue Laws Study Committee. The original bill would have limited the withholding requirement for payments to nonresident contractors, so that it would apply only to payments to contractors doing business as athletes and entertainers. The House committee substitute further limited the requirement to payments to a nonresident contractor in excess of $5,000 a year. The proposed Senate committee substitute changes this threshold to $1,500. These changes relating to withholding become effective retroactively as of January 1, 1998.

The proposed Senate committee substitute adds provisions requiring occupational licensing boards for construction-related trades to cooperate with the Department of Revenue to assure that nonresidents pay delinquent taxes before being licensed to do business in this State. Most of these changes affecting occupational licensing become effective July 1, 1999.

Nonresident Withholding Changes. The 1997 General Assembly enacted S.L. 1997-109 to require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. The nonresident withholding requirement was suggested by the Department of Revenue and recommended to the 1997 General Assembly by the Revenue Laws Study Committee. The withholding requirement was phased in as follows. Beginning January 1, 1998, it applied to payments to individuals for any personal services and payments to entities for services relating to entertainment, athletic events, and construction. The withholding requirement was to be expanded to payments to entities for all personal services effective January 1, 1999.

After S.L. 1997-109 became law, legislators, staff, and the Department of Revenue were contacted by businesses that were required to withhold from their payments for personal services. These businesses stated that the withholding requirement would create an expensive, time-consuming burden on them. They would have to reprogram their accounting software, examine invoices manually, and make difficult judgment calls regarding where services were performed. Large, multistate corporations in particular claimed that the new law would be burdensome. In response to these concerns, House Bill 1318 would repeal nearly the entire withholding requirement. The only part that would be retained is the

requirement to withhold from payments for services relating to entertainment and athletic events.

As enacted by S.L. 1997-109, the withholding requirement applied to payments made to nonresident contractors only if the total payments exceeded $600 during a calendar year. The $600 threshold is the federal threshold for tax reporting. House Bill 1318 raises the threshold for withholding from contract payments to nonresident athletes and entertainers from $600 to $1,500 a year. The higher threshold will have the effect of insulating organizations, such as PTAs, from having to withhold on their occasional payments to out-of-state entertainers.

The rollback of the withholding requirement would become effective retroactively as of January 1, 1998. Anyone who had been complying with the law by withholding for services other than those performed by athletes and entertainers could choose to refund the withheld taxes only if the taxes had not yet been paid into the Department of Revenue. All taxpayers who had taxes withheld from their payments will receive a credit for the withheld taxes when they file their income tax return.

The rationale for limiting the withholding requirement to athletes and entertainers is that athletic and entertainment events can be easily identified by those required to withhold, the entire performance is clearly taxable to the state where it occurs, and, because of the large sums often involved, the administrative burden of withholding is small compared to the benefit the State receives. For other personal services performed by nonresidents, the burden of compliance outweighs the benefit because the services are less easily identified and may be performed partly in this state and partly in another state. For those, such as large, multistate corporations, who deal with a myriad of contractors for goods and services throughout the nation, the burden can be significant.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe. The 1997 act imposed the withholding requirement to address this problem.

The 1997 act requires a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent is required to give each nonresident a statement similar to a W-2 form in January and

to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes are credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident receives credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

Occupational Licensing Changes. Sections 4 through 13 of House Bill 1318 add reporting and licensing requirements for nonresident individuals and foreign entities that seek occupational licenses for construction-related occupations. These changes would affect four occupational licensing boards:

1. The State Licensing Board for General Contractors
2. The State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors
3. The State Board of Examiners of Electrical Contractors
4. The North Carolina State Board of Examiners for Engineers and Surveyors.

The bill would provide that each of these licensing boards must require a nonresident corporation or a nonresident limited liability company to first obtain a certificate of authority from the Secretary of State before being licensed by the board to do business or, in the case of engineers and surveyors, before having their certificate of licensure renewed. This requirement would become effective July 1, 1999. Under current law, all foreign corporations and foreign limited liability companies are required to obtain a certificate of authority from the Secretary of State before transacting business in this State. G.S. 55-15-01, G.S. 57C-7-02.

The bill would also provide a mechanism to prevent nonresident individuals and foreign entities from renewing their occupational licenses if they (or one of their partners or members, in the case of a partnership or limited liability company) owe a delinquent income tax debt. A delinquent income tax debt is a final debt after the taxpayer has been notified of the final assessment and no longer has the right to contest the amount. The provisions relating to individuals would go into effect July 1, 1999. The provisions relating to entities would go into effect July 1, 2000.

If requested by the Secretary of Revenue, each construction-related licensing board will provide the Secretary of Revenue annual lists identifying the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the board. Occupational licensing boards are already required to obtained individual licensees' social security numbers under G.S. 93B-14. The Department of Revenue will check these lists against its records of taxpayers who owe delinquent income tax debts. If the Department of Revenue finds that a

nonresident individual or a foreign corporation owes a delinquent tax debt, the Department will instruct the licensing board not to renew the taxpayer's license until the debt has been settled. If the Department of Revenue finds that a partner in a foreign partnership or a member of a foreign limited liability company owes a delinquent tax debt, the Department will instruct the licensing board not to renew the partnership or limited liability company's license until the debt has been settled. The license may be renewed once the licensing board receives written notice from the Secretary of Revenue that the debt has been settled.

This provision is similar to G.S. 93B-13, which revokes an occupational license if the licensee fails to comply with child support requirements. The proposed mechanism in this bill is also similar to the law regarding property taxes on motor vehicles. The Division of Motor Vehicles provides the counties periodic lists of motor vehicles registered and renewed in this State. If the owner fails to pay local property taxes on the vehicle, the county notifies DMV not to renew the vehicle registration until the taxes are paid. This mechanism provides an incentive for taxpayers to pay their taxes.

Section 8 of the bill clarifies that taxpayers are not entitled to an additional administrative hearing regarding a board's refusal to renew a license based on a delinquent income tax debt. The Department of Revenue will block renewals only for those debts for which the taxpayer has already been afforded full procedural rights required by the Due Process Clause of the United States Constitution.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1318 (Second Edition)

SHORT TITLE: Limit Nonresident Withholding

SPONSOR(S): Representatives Neely, et al.

FISCAL IMPACT

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

	($million)				
	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	(7.0)	(7.0)	(7.0)	(7.0)	(7.0)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: The act is effective retroactively as of January 1, 1998.

BILL SUMMARY: This bill will limit the withholding requirement for payments over $5,000 to nonresident contractors to apply only to athletes and entertainers.

ASSUMPTIONS AND METHODOLOGY: The fiscal note for HB 57 (S. L. 1997-109) estimated that $10 million in General Fund revenue would be gained through nonresident withholding. Of this amount, $3 million was attributed to athletes and entertainers and $7 million to other contractors. Since this revenue was included in budget availability for future fiscal years, removal of "other contractors" from withholding will reduce General Fund revenues by $7 million each fiscal year.

Changing the withholding threshold from $600 in the current law to $5,000 in this bill will have no impact on the estimate for athletes and entertainers. The estimate made in 1997 was based on payments to entertainers performing in the state's largest venues and to athletes in events sponsored by professional groups such as the PGA, USTA, and NASCAR.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 9, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1489*
Committee Substitute Favorable 7/20/98

Short Title: Local Tax Information/Refunds. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE COLLECTION OF LOCAL TAXES BY ALLOWING CERTAIN GOVERNMENT OFFICIALS TO SHARE SPECIFIED TAX INFORMATION AND BY ALLOWING A TAXPAYER TO RECEIVE A RELEASE OR REFUND OF PRORATED VEHICLE PROPERTY TAXES IF THE TAXPAYER MOVES OUT-OF-STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259(b) is amended by adding two new subdivisions to read:

"(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for

the administration of its local tax on prepared food and beverages:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in the business of selling prepared food and beverages.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local tax on prepared food and beverages."

Section 2. G.S. 153A-148.1(a) is amended by adding two new subdivisions to read:

"(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.

(5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor ~~Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year,~~ Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for ~~the~~ any full calendar months remaining ~~after surrender.~~ in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

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

EXPLANATION OF HOUSE BILL 1489 (2nd Edition):
Local Tax Information/Refunds

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 24, 1998
SPONSOR: Representative Neely

House Bill 1489 makes the following two change relating to local taxes, effective when the bill becomes law:

1. Sections 1 and 2 authorize the Department of Revenue and county tax officials to share certain tax information with one another and with regional transit authorities in order to facilitate collection of taxes. An earlier version of these changes was recommended by the Public Transit Study Committee.
2. Section 3 allows a motor vehicle owner to receive a prorated refund or release of property taxes on the vehicle when the owner surrenders the registration plates to the Division of Motor Vehicles because the owner has moved to a different state and registered the vehicle in another jurisdiction. This change was recommended by the Revenue Laws Study Committee.

Information Sharing. The Department of Revenue collects the alternate highway use tax, which is a gross receipts tax on vehicle rentals. Regional transit authorities are authorized to levy gross receipts taxes on vehicle rentals. In addition, the Department of Revenue collects sales and use taxes from retailers, including restaurants and other businesses that sell prepared food and beverages. Several local governments are authorized to levy local taxes on prepared food and beverages.[1] The compliance and audit information gathered by the Department of Revenue in collecting the State vehicle rental tax could assist regional authorities in enforcing their local vehicle rental taxes and the compliance and audit information gathered by the Department of Revenue in collecting sales and use taxes could assist local governments in enforcing their local taxes on prepared food and beverages. G.S. 105-259 prohibits the Department of Revenue from revealing confidential tax information, however.

Section 1 of this bill would authorize the Department of Revenue to provide regional transit authorities, on an annual basis, identifying information about the retailers from whom it collects the State vehicle rental tax. In addition,

---

[1] Charlotte/Mecklenburg, Cumberland County, Dare County, Wake County, and the Town of Hillsborough.

Section 1 would authorize the Department of Revenue to provide counties and cities, on an annual basis, identifying information about the retailers from whom it collects sales and use taxes who might be engaged in the business of selling prepared food and beverages.

Some counties audit vehicle rental dealers for property tax purposes and audit retailers of prepared food and beverages for purposes of the local meals tax. The information gathered by a county in these audits could assist regional transit authorities in enforcing their vehicle rental taxes and could assist the State in enforcing the sales and use taxes it collects. G.S. 153A-148.1 prohibits counties from sharing tax information about a taxpayer's income or receipts, however. Section 2 of this bill would authorize counties and regional transit authorities to exchange tax information about vehicle rental dealers with one another when the exchange will aid either agency in fulfilling its duties. Section 2 would also authorize counties and regional transit authorities to provide tax information to the Department of Revenue when the information would help the Department of Revenue in its duties.

Property Taxation of Motor Vehicles. In 1993, counties began taxing motor vehicles that are registered with the Division of Motor Vehicles on a revolving, year-round basis. Under this system, the taxpayer receives a property tax notice a couple of months after the registration is obtained or renewed and the taxes are due within four months after the registration was obtained or renewed. If the taxes remain unpaid for more than four months after they become due, the county places a block on the vehicle's registration with DMV. DMV will then refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

In some cases, taxpayers move out of state during the tax year. Therefore, the block on the vehicle's registration would not impact them if they have not paid the property taxes. In most instances, the taxpayer is willing to pay the taxes on the part of the tax year that the vehicle was registered in North Carolina. In order to obtain part of the tax liability, some counties prorate the amount of taxes due, although they do not have statutory authority to do so. This proposal provides that authority by requiring the partial release or refund of property taxes on a motor vehicle when the taxpayer surrenders the vehicle's registration plate to the DMV because the taxpayer has moved out of state and registered the vehicle in another jurisdiction. The taxpayer may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender.

Background on Regional Transit Authorities. In 1997, the General Assembly enacted S.L. 1997-417, which authorized a regional transit authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the

business of renting passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax is collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13% if the authority levies the full 5% tax. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transit authority is a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes or a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes. The authority created under Article 26, the Triangle Transit Authority for Wake, Durham, and Orange Counties, is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Article 27 of Chapter 160A, enacted in 1997, authorizes the creation of a regional transit authority for the Triad region. The Triad Transit Authority may be created by the four largest cities of the five counties served by the Authority in order to promote the development of sound transportation systems in the area served by the Authority. The Authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area. The counties served by the Authority would be Forsyth, Guilford, Randolph, Davidson, and Alamance. The four major cities involved in the creation of the Authority are Greensboro, High Point, Winston-Salem, and Burlington.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1489 (2nd Edition of the Bill)

SHORT TITLE: Local Tax Information/Refunds

SPONSOR(S): Representative Neely

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Regional Transportation Authority, Regional Public Transportation Authority, County and City Governments.

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

BILL SUMMARY: This bill authorizes tax officials to share information, about the taxes paid on leased vehicles, with a regional public transportation authority or a regional transportation authority. The bill directs state tax officials to share information regarding sales and use taxes with city and county government representatives. Finally, the bill gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer moves out of state and surrenders their license plate.

ASSUMPTIONS AND METHODOLOGY: The information sharing portion of the bill will have no impact on state revenues and will impose a very minimal expense on the Department of Revenue. The Department of Revenue has indicated that this bill will be easy to administer. As for local governments, there may be some positive revenue impact if the information facilitates the collection of more taxes. The section dealing with the collection of motor vehicle taxes could have an impact at the local level. However, because may counties currently prorate this item, the bill will not create a significant change in local revenues.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY: Tom Covington
DATE: August 21, 1998

(attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9-1-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Prow	Jordan Price Wall
Paul Lamb	Lamb Consulting
Ed Rego	N.C. Assoc. of Co. Comm
Susan Harrison	WCPSS
Susan Markham	EGHS
Alina Gregory	Poyner & Spruill
[illegible]	NCAFI
[illegible]	First Citizens Bank
Nikki Bourland	NCAFI
TERRY EDWARDS	WACHOVIA BANK
Diane Johnson	DMV
BILL SCOGGIN	NC BAR ASSOC.
Dianne Beasley	NC Food Service

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9-1-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Carstens	State Construction
David Simmons	ZDA, PA
Ruth Sappie	NCDOT
Monty Hagler	Capital Strategies
Jim Ritchey	TTA
Amy Fullbright	Hunton & Williams

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9-1-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PERRI MORGAN	NFIB
Leslie Bevacqua	NCCBI
Christie Barbee	CAPA
Alice Garland	EC
bin Laden	Afghanistan
Lynnd Coggs	CSX
Bob Stamm	NC Forestry Assoc.
Patricia A. Yancey	NCAGSC
Clifton B. Metcalf	UNC GA
Jeff Davis	UNC-GA
Dave Simpson	CAROLINAS AGC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9-1-'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Grier	JM Thompson Co
Nancy Pomeranz	DOR
Paul Zigler	OSBM
Butch Gunnells	NCSODA
[illegible]	NCHBA
Don Beason	The Capital Group
Sabra Faires	NC Dept. of Revenue
Kirk Boone	NC Dept. of Revenue
Donna Powell	NCDOR
Keith Hartmann	DOR
[illegible] Rogers	NCDOT

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, September 01, 1998

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

FAVORABLE

H.B.(SCS)**577** Forester Registration
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1489** Local Tax Information/Refunds
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1502** UNC Nonappropriated Cap. Projects
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**1533** Halifax Regional Airport
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)**1318** Modify Nonresident Withholding
Draft Number: PCS4214
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: None

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, September 02, 1998

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1518** Eagle Scout Special Plates

Draft Number:	PCS4215
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1082** Native American Special Plates

Draft Number:	PCS3184
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: These 2 bills acted on in Sen Finance Meeting on 9-1-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, SEPTEMBER 2, 1998

12 NOON - ROOM 544

SB 1239 - Expand Qualified Business Tax Credit - Senator Hoyle

SENATE FINANCE COMMITTEE

WEDNESDAY, SEPTEMBER 2, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Wednesday, September 2, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 24 committee members present. Senator Kerr introduced the pages: Joshua Snyder from Durham, sponsored by Senator Gulley, and Sarah Thompson from Chocowinity, sponsored by Senator Warren.

S.B. 1239 - Expand Qualified Business Tax Credit.

Senator Hoyle was recognized to explain his bill and offered a Committee Substitute. On Motion by Senator Dannelly, the Committee Sub was adopted for discussion. After some general discussion, Senator Rand sent forth an Amendment which was adopted on his motion. There were several questions from the committee members and after a lengthy discussion, on motion by Senator Ballantine, the Committee Sub, as amended, was given a Favorable Report by the committee. Copy of original Bill, Committee Sub., Amendment, new Committee Sub, Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1239
Finance Committee Substitute Adopted 6/4/98

Short Title: Expand Qualified Business Tax Credit. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM THE QUALIFIED BUSINESS TAX CREDIT AND TO INCREASE THE CAP FROM SIX MILLION DOLLARS TO NINE MILLION DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 443 of the 1993 Session Laws is repealed.

Section 2. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 1999.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 3. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~six million dollars ($6,000,000).~~ nine million dollars ($9,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds ~~six million dollars ($6,000,000),~~ nine million dollars ($9,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of ~~six million dollars ($6,000,000)~~ nine million dollars ($9,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer."

Section 4. Section 3 of this act is effective for investments made on or after January 1, 1997. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1239
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1239-PCS8858-LC

Short Title: Exempt Family Farms/Family Businesses. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FAMILY FARMS AND FAMILY BUSINESSES FROM INHERITANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-9 is amended by adding a new subdivision to read:

"(9) An amount equal to the deduction for family-owned business interests that would be allowed under section 2057 of the Code if calculated without regard to the maximum deduction limitation provided in section 2057(a)(2) of the Code."

Section 2. This act becomes effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE _____

S. B. No. 1239 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~) Rand

Sen.)

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

( ) WHICH CHANGES THE TITLE

by adding the following between the lines:

"Whereas, The General Assembly recognizes the importance of family farms and family-owned business; and

Whereas, relief from State inheritance tax is already provided to surviving spouses; and

Whereas, the General Assembly finds that this relief should be extended to those who have worked hard to build up a family farm or family business and who wish to pass the fruits of their labors on to their families; Now, Therefore, "

~~The General Assembly now enacts:~~ #

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1239
Finance Committee Substitute Adopted 6/4/98
Proposed Committee Substitute S1239-PCS8859-LC

Short Title: Exempt Family Farms/Family Businesses. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FAMILY FARMS AND FAMILY BUSINESSES FROM INHERITANCE TAXES.

Whereas, the General Assembly recognizes the importance of family farms and family-owned businesses; and

Whereas, relief from State inheritance tax is already provided to surviving spouses; and

Whereas, the General Assembly finds that this relief should be extended to those who have worked hard to build up a family farm or family business and who wish to pass the fruits of their labors on to their families; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-9 is amended by adding a new subdivision to read:

"(9) An amount equal to the deduction for family-owned business interests that would be allowed under section 2057 of the Code if calculated without regard to the maximum deduction limitation provided in section 2057(a)(2) of the Code."

Section 2. This act becomes effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

EXPLANATION OF SENATE BILL 1239 (PCS):
Exempt Family Farms/Family Businesses

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: September 2, 1998
SPONSOR: Senator Hoyle

The proposed committee substitute for **Senate Bill 1239** would provide a full inheritance tax deduction for the value of a family-owned business, such as a family farm. The bill would become effective January 1, 1999, and apply to the estates of decedents dying on or after that date.

The Internal Revenue Code provides a federal estate tax deduction for the value of qualified family-owned businesses. The federal deduction is capped at a maximum of $675,000 and this maximum may be reduced so that, when combined with the amount excludable by the federal estate tax credit, no more than $1.3 million in total value is excluded from the estate. This bill adopts the federal deduction but without the cap - there is no maximum amount that may be deducted under the proposed committee substitute.

A family-owned business is a business or business interest owned for at least five years by the decedent or a member of the decedent's family and in which the decedent or a member of the decedent's family materially participated. The business interest must be passed to "qualified heirs" of the decedent. A qualified heir is a family member or an active employee employed for at least 10 years. Family members are defined as the decedent's (1) parents and grandparents, (2) spouse, (3) children, grandchildren, etc., including stepchildren and stepgrandchildren, (4) brothers, sisters, nieces, and nephews, and their children, and (5) a spouse of anyone described in #3 or 4.

The business may be any type of business, including a farm, but may not be a passive investment business. It may be a sole proprietorship or a business entity. If it is a corporation, it may not be publicly traded. If the business is a business entity, at least 50% of it must be owned by the decedent and members of the decedent's family. However, the decedent and family members need to own only 30% or more of the business if at least 70% is owned by two families or 90% is owned by three families.

To qualify for the deduction, the value of the business must be more than 50% of the value of the decedent's adjusted gross estate. In addition, the decedent must be a citizen or resident of the United States and no deduction is allowed if the principal place of business is outside the United States.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1239 (Proposed Senate Finance Comm. Sub.)
SHORT TITLE: Exempt Family Farms/Family Businesses

FISCAL IMPACT

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

($ Million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund*	-	**-1.5**	**-2.0**	**-2.0**	**-2.0**

PRINCIPAL DEPARTMENT AFFECTED: The inheritance tax is collected by the Department of Revenue.

EFFECTIVE DATE: Applies to estate of decedents dying on or after January 1, 1999.

BILL SUMMARY: The 1997 Tax Relief Act enacted by Congress allows a maximum $1.3 million federal estate tax exclusion for certain family-owned business interests. This exemption incorporates the regular estate tax exemption so that currently the impact of this deduction is a maximum of $675,000. As the regular federal exemption rises to $1 million during the next 8 years, the special exclusion for business interests will decline to $300,000.

The proposed committee substitute allows a full North Carolina inheritance tax deduction for family-owned business interests that qualify for the federal exemption.

ASSUMPTIONS AND METHODOLOGY: This estimate was based on estate tax information from the IRS, discussions with the Department of Revenue, and a review of a statistical tabulation of types of property listed on federal estate tax returns filed in 1996, and The fiscal impact is affected by the following factors:

(1) The current inheritance tax allows a full exemption for property passing to the surviving spouse and an effective exemption of at least $600,000 for Class A beneficiaries (essentially lineal ancestors and lineal descendants). The current exemption is even greater if the property is divided among more than one Class A beneficiary

(COVER)

(2) Families with a large estate have an incentive to use legal specialists and other estate planners to minimize their tax liability

(3) This bill is tied to Federal eligibility requirements.

Estates have 9 months after a death to pay the tax. Thus, the January 1, 1999 effective date means that there will be no budgetary impact for the 98-99 fiscal year and only 3 quarters for 99-00.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE WEDNESDAY, SEPTEMBER 2, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Heagerty	NC Electric Cooperatives
Sabra Faires	Dept. of Revenue
Steve Woodson	NC Farm Bureau
Kathryn Sawyer	Commerce
BRENT LANE	COMMERCE
Gene Ainsworth	RJR
Jane P. Gray	DOJ
Chris Fitzsimon	Common Sense Foundation

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE WEDNESDAY, SEPTEMBER 2, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE WEDNESDAY, SEPTEMBER 2, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Willie Riddick	DOR
Susan Markham	EGTS
Doug Miskew	IBM
Sam Johnson	Atty
Alice Garland	Ec
Christie Barlow	CAPA
Leslie Bewacqua	NCCBI
[illegible]	WISP
Ann Case	NCRMA
Amy Tullbright	Hunton & Williams
[illegible]	Poyner & Spruill
Alicia Gregory	Poyner & Spruill

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE WEDNESDAY, SEPTEMBER 2, 1998

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patricia Rowden	NCACC
Jim Blackburn	NCACC
Sandy Sands	WCSR
Tom Duncan	WCSR
Tommy Hamilton	Hamilton Consulting
D Roy	NCDOT
Bill Davis	DOR
Charles Hawks	DOR
NANCY POMERANZ	DOR
David Simmons	ZDA, PA
Thom Fullerton	Moore - Van Allen

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, September 02, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1239** Expand Qualified Business Tax Credit.

Draft Number:	PCS8859
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Sept 2 SB 1239

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, SEPTEMBER 3, 1998

ON THE FLOOR - SESSION RECESS

HB 68 - Roanoke Rapids Bicycle Disposition

SENATE FINANCE COMMITTEE

THURSDAY, SEPTEMBER 3, 1998

ON THE FLOOR - SESSION RECESS

The Senate Finance Committee met on Thursday, September 3, 1998, on the floor of the Senate during a recess with Senator John Kerr presiding and with all the committee members present for session in attendance.

H.B. 68 - Roanoke Rapids Bicycle Disposition.

Senator Soles offered a Committee Substitute for H.B. 68 which was adopted by the committee on his motion. Senator Soles explained the Committee Sub and on motion by Senator Foxx, the Committee Sub for H.B. 68 was given a Favorable Report by the committee. Copy of original Bill and Committee Sub included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment #1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 68

Short Title: Roanoke Rapids Bicycle Disposition. (Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF ROANOKE RAPIDS TO DONATE UNCLAIMED BICYCLES TO CHARITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Asheville and Hendersonville~~ Asheville, Hendersonville, and Roanoke Rapids only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 68
Proposed Senate Committee Substitute H68-PCS1616-LB1

Short Title: Lake Waccamaw Annexation. (Local)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF LAKE WACCAMAW.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Lake Waccamaw are extended to include the following described territory:

Waccamaw Shores Drive

BEGINNING at an existing concrete monument, in the northeast right-of-way of Waccamaw Shores Drive, also known as S.R. 1967, said existing concrete monument marking the most southern corner of the Lake Waccamaw Camp Ground lands now or formerly belonging to Gene Grainger as recorded in Deed Book 385 Page 531 Columbus County Registry, said existing concrete monument also marking the most western corner of lands of James and Paul Council as recorded in Deed Book 261 Page 189 of the Columbus County Registry. Said existing concrete monument also marking the most southern limits of the Town of Lake Waccamaw. Running thence along the eastern edge of Waccamaw Shores Drive in a southeasterly direction to an existing concrete monument marking the southwest corner of lot 273 Block A of the Waccamaw Shores Subdivision as shown and delineated on a plat recorded in Plat Book 8 Page 12 of the Columbus County Registry. Thence continuing along the south line of lot 273, North 82 degrees 28 minutes East - 105.83 feet to an iron marking the southeast corner of lot 273 said iron being located South 40 degrees 29 minutes 30 seconds West - 47.07 feet from NC Grid Station "Dam". Said NC Grid

Station "Dam" being located on the West End of the Dam at Lake Waccamaw that accommodates the waters of Lake Waccamaw into the Waccamaw River. Thence with the high water of Lake Waccamaw in a northwardly and northwestwardly direction to an old pipe marking the southeast corner of lot 259 of the J. L. Sides Subdivision as shown and delineated on Plat recorded in Plat Book 4 Page 69 of the Columbus County Registry. Said old pipe also marking a corner of the limits of the Town of Lake Waccamaw. Thence along the south line of lot 259 heretofore referred to and also the existing limits of the Town of Lake Waccamaw, South 75 degrees 45 minutes West - 106.59 feet to an old iron marking the southwest corner of lot 259. Said old iron also being located in the northeastern line of the James and Paul Council lands as described in Deed recorded in Deed Book 261 Page 189. Thence with the James and Paul Council line and also the existing limits of the Town of Lake Waccamaw, North 48 degrees 48 minutes 57 seconds West - 78.51 feet to an existing concrete monument marking the most eastern corner of the heretofore referred Gene Grainger lands. Thence with the Grainger line and also the existing limits of the Town of Lake Waccamaw, South 23 degrees 25 minutes West - 111.21 feet to the BEGINNING.

Shawnee Acres and Bella Coola

BEGINNING at Town Survey monument number 12, said Town Survey monument being located at the intersection of the center line of S.R. 1947 (locally known as Bella Coola Road) and the eastern limits of the Town of Lake Waccamaw. Running thence from said BEGINNING Town Survey monument number 12 and along the centerline of S.R. 1947 in a southeastwardly and southerly direction to a point in said centerline. Thence leaving said centerline, South 88 degrees 02 minutes 22 seconds West - approximately 30 feet to an iron marking the southeast corner of lot 51 according to "Map of a Survey for Bella Coola Corp.", prepared by David B. Goldston, Jr., R.L.S., dated 30 October 1978". Thence with the south line of lot 51, South 88 degrees 02 minutes 22 seconds West - 200.00 feet to an iron in the high watermark of Lake Waccamaw. Thence with the high watermark of Lake Waccamaw in a northerly and northwestwardly direction to Town Survey monument number 14. Said Town Survey monument number 14 marking the southeast corner of the limits of the Town of Lake Waccamaw. Thence with the eastern limits of the Town of Lake Waccamaw, North 01 degrees 11 minutes 20 seconds West - 271.73 feet to Town Survey monument 13 located in the centerline of S.R. 1942 (locally known as Creek Ridge Road). Thence continuing with the eastern limits of the Town of Lake Waccamaw, North 01 degrees 11 minutes 20 seconds West - 295.14 feet to the BEGINNING.

Section 2. This act becomes effective June 30, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, September 03, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

H.B. **68** Roanoke Rapids Bicycle Disposition.

Draft Number:	PCS1616
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Sept 3 HB 68

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, SEPTEMBER 15TH

12 NOON - ROOM 544

HB 1248 - Tobacco Settlements Payments

HB 1326 - Update IRC Reference/Conform Gift Tax

HB 1633 - Spruce Pine Boundary Correction

HB 1737 - North Carolina State University Centennial Campus

SENATE FINANCE COMMITTEE

TUESDAY, SEPTEMBER 15, 1998

12 NOON - ROOM 544

The Senate Finance Committee met on Tuesday, September 15, 1998, at 12 noon in Room 544 with Senator John Kerr presiding. There were 20-committee members present.

H.B. 1326 - Update IRC Reference/Conform Gift Tax.

Representative Lyons Gray was recognized to explain this bill. Senator Lee moved for the adoption of a Committee Substitute and the motion carried. After questions by the committee members and discussion, on motion by Senator Ballance, the new Committee Sub for H.B. 1326 was given a Favorable Report. Copy of HB 1326 (CS#2), new Committee Sub., Explanation and Fiscal Note included in the Minutes.

H.B. 1248 - Tobacco Settlement Payments.

Representative Baker was recognized to explain this bill. H.B. 1248 had previously been voted on in the Finance Committee and was again before the committee for more work on the bill. The Committee adopted a new Committee Sub and on motion by Senator Albertson, the new Committee Sub for H.B. 1248 was given a Favorable Report. Copy of H.B. 1248 (SFCS adopted on 8/20/98) new Committee Sub (SCS PCS6472), Explanation and Fiscal Note included in the Minutes.

H.B. 1737 - North Carolina State University Centennial Campus.

Senator Reeves was recognized to explain this bill. Mr. George Worsley, Chief Financial Officer for NC State spoke in support of this bill. On motion by Senator Winner, H.B. 1737 was given a Favorable Report. Copy of Bill (HCS), Explanation and Fiscal Note included in the Minutes.

H.B. 1633 - Spruce Pine Boundary Correction.

Representative Buchanan was recognized to explain this bill. Senator Soles sent forth an Amendment and on motion by Senator Shaw, the Amendment was adopted. On motion by Senator Shaw, the Bill, as amended, will be rolled into a Committee Substitute and given a Favorable Report. Copy of H.B. 1633 (CS # 2), Amendment and new Committee Sub (PCS 2429) included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up List is Attachment # 1
Committee Reports are Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98
Committee Substitute #2 Favorable 8/5/98

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, TO ALLOW AN INCOME TAX DEDUCTION FOR EMPLOYEES' PAYMENTS TO THEIR EMPLOYERS FOR PARKING, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997~~, August 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the

next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount the taxpayer paid during the taxable year to the taxpayer's employer for parking provided by the employer."

Section 9(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 9(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. Section 8 of this act is effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98
Committee Substitute #2 Favorable 8/5/98
Proposed Senate Committee Substitute H1326-PCSX6473-LC

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES, TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS, AND TO CORRECT TWO REDLINING ERRORS IN 1998 TAX LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ September 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8, as amended by S.L. 1998-98, reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 15 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Part.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Part received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Part,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding ~~year.~~ year, except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable year before the remaining portion may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Part.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 15 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine an item originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of net economic loss that can be carried forward to a taxable year that remains open under the statute of limitations."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 15 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-130.8(a)(4), as amended by this act, reads as rewritten:

"(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of the loss may be carried forward to a succeeding ~~year, except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable years before the remaining portion may be carried forward to a succeeding~~ year."

Section 9. G.S. 105-467(5), as amended by S.L. 1998-98, reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~issued~~ purchased under the Food Stamp Program, 7 U.S.C. § 51."

Section 10(a). Section 9 of Senate Bill 1230, 1997 General Assembly, is repealed.

Section 10(b). G.S. 105-164.13(11)a., as amended by Section 14 of S.L. 1998-98, reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107."

Section 11(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after January 1, 1999, and apply to losses incurred for taxable years beginning on or after January 1, 1993. Section 8 of this act becomes effective for taxable years beginning on or after January 1, 2002.

Section 11(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1326 (PCS):
Update IRC Reference/Conform Gift Tax

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: September 14, 1998
SPONSOR: Representative Gray

The proposed Senate Committee Substitute for House Bill 1326 makes four changes relating to tax law:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to September 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.
3. It extends the carryforward period for corporate net economic losses from five years to fifteen years, effective for taxable years beginning on or after January 1, 1999, with a three-year cap on the amount of the extended losses that may be deducted.
4. It corrects two redlining errors in Finance bills enacted earlier this session.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. This year, it enacted several additional changes that will affect taxable income. Because the State corporate and individual income taxes are based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and attachments list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998.

One of the federal tax changes enacted in 1997 was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

Section 5 of House Bill 1326 provides that the recent federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not become effective until January 1, 1998. Under Article 1, Section 16 of the North

Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically all federal changes. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

The Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of House Bill 1326 adopts for North Carolina gift tax purposes the provisions of federal law listed below. Conforming to

federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Education Assistance Authority opened the Parental Savings Trust Fund in early June, 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified

higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

Corporate Loss Carryforwards. Sections 6, 7, and 8 of the bill would extend the corporate income tax carryforward for net economic loss deductions from five years to fifteen years, effective beginning with the 1999 tax year. Losses from 1993 and later tax years will benefit from this extension. For the first three years this extension is in effect, the carryforward deduction for losses more than five years old is restricted to 15% of taxable income. Beginning with the 2002 tax year, there will be no cap on the deduction for losses carried forward.

This part of the bill was not recommended by the Revenue Laws Study Committee but was added by amendment in House Finance and then revised in this proposed committee substitute. The carryforward period for the similar net operating loss deduction under the Internal Revenue Code was recently extended from fifteen to twenty years, but most states allow no more than a fifteen-year carryforward period. Because it may be difficult for an auditor to substantiate a loss carryforward based on deductions that are ten to fifteen years old, the bill clarifies that the corporation must maintain records that verify the amount of the loss deduction claimed and also provides that the taxpayer or the Secretary of Revenue may redetermine an item for a tax year that is closed under the statute of limitations in order to calculate a loss carried forward to an open year.

A net economic loss is the amount by which a corporation's deductions for a taxable year exceed its income from all sources, including income not taxable by the State. Income not taxable includes income items that are deductible in determining State net income as well as a multi-state corporation's nonbusiness income that is allocable to another state. G.S. 105-130.8 allows a corporation to carry a net economic loss forward and deduct it in the next five succeeding taxable years, but only to the extent the carried forward loss exceeds the amount of any income not taxable for each succeeding year. If the corporation is a multi-state corporation, it may deduct from income allocable to this State only that percentage of the carried forward loss that corresponds to the percentage of the corporation's income allocated and apportioned to this State.

The State's net economic loss provision is apparently based on a similar provision that was in the 1939 Internal Revenue Code. The State originally allowed a two-year carryforward; the carryforward period was extended to five years in 1957.

The State's calculation of net economic losses differs in a number of respects from the net operating loss deduction currently provided in the Internal Revenue Code. The Internal Revenue Code of 1954 changed the federal net economic loss deduction to a net operating loss calculation based primarily on revenues and expenditures affecting taxable income. Some limitations and restrictions have evolved in the ensuing years relating to continuity of corporate ownership, corporate

equity, successor corporations, and other situations. Of course, under federal law, it is not necessary to address the state income tax issues regarding multi-state corporations whose income is allocable to more than one state. Finally, under federal law, a corporation may elect to carry the federal net operating loss deduction back for two earlier years before carrying it forward for twenty years.

Technical Corrections. Sections 9 and 10 of the bill correct two redlining errors that occurred in Finance bills enacted earlier this session. The changes are technical and have no substantive effect.

Internal Revenue Service Restructuring and Reform Act of 1998

The following changes made by the federal IRS Restructuring and Reform Act of 1998, which became law July 22, 1998, will affect North Carolina's tax laws if the reference to the Code is updated to September 1, 1998.

1. Section 3462. Clarify Provisions Relating to Examination and Collection Activities: Offers-in-compromise. This section has no direct impact on the State's tax laws, but the Department of Revenue always considers a federal settlement as one factor when the Department is deciding on how and whether to negotiate a settlement with a taxpayer. The specific changes made by this section, which becomes effective July 23, 1998, are:
    - The IRS Secretary will prescribe guidelines for settlements. The guidelines will include schedules of allowances for basic living expenses and prohibit rejection of a low-income taxpayer's offer solely on the basis of amount.
    - The IRS may not levy while certain offers are pending or while certain installment agreements are pending or in effect.
    - The IRS Secretary will establish procedures for independent administrative review of rejected offers-in-compromise and will publish a statement of taxpayers' rights concerning offers-in-compromise.

2. Section 3711. Offset of Past-Due, Legally Enforceable State Income Tax Obligations Against Overpayments. This section expands the federal setoff debt collection program to include income taxes owed to States. Under this program, if the IRS owes a refund to a taxpayer, it will collect debts owed by the taxpayer by setting them off against the refund and will remit the set-off amount to the creditor. The priorities for this program are IRS debts, child support arrearages, and debts owed federal agencies. State income tax debts will become the fourth priority effective for refunds payable beginning January 1, 2000. Although this change does not affect North Carolina tax law, it will increase North Carolina tax revenues when debts are offset and remitted to the Department of Revenue. The offset program applies only to income tax debts owed by State residents – it will not address the problem of nonresidents who fail to pay income taxes owed to the State. To be eligible for offset, the income tax debt must have been finally determined by a judicial or administrative procedure and the time for appeal must have passed. Before submitting an income tax debt for setoff, the Department of Revenue must notify the taxpayer and give the taxpayer an opportunity to contest the debt.

3. Section 5002. Clarification of Exclusion of Meals for Certain Employees. Under current law, meals furnished to employees on the employer's premises and for the employer's convenience are not taxable income to the employee. This section provides that if the majority of the meals furnished to employees on the employer's premises are for the employee's convenience, then the meals furnished not for the employer's convenience will also be treated as if they were furnished for the employer's convenience (and thus will not be taxable to the employee).

4. Section 7001. Clarification of Deduction for Deferred Compensation. In general, contributions under a deferred compensation plan are deductible by the employer in the year in which the amount is includible in the employee's income (Section 404 of the Code). Vacation pay treated as deferred compensation is deductible by the employer in the year it is paid to the employee. In determining whether an item is considered deferred compensation, if the item is received by the employee within 2 ½ months after the end of the taxable year, it is not deferred. A recent case held that if an employer funded vacation and severance pay by obtaining a letter of credit within that 2 ½ month period, it could deduct the cost because the benefits were considered received by the employee in that period and thus were not deferred compensation. This section clarifies that compensation is not treated as received by an employee, or paid, until actually received by the employee. This clarification will require some employers to change their method of accounting. They will be allowed to spread the resulting adjustments over three years.

5. Section 7002. Freeze Grandfathered Status of Stapled or Paired-share REITS. A REIT is a real estate investment trust. It is an entity that receives most of its income from passive real estate-related investments and does not engage in any active trade or business. It is a pass-through entity whose income is not taxed if distributed to shareholders. In a "stapled" REIT structure, the shares of a REIT and a C Corporation may be traded but not sold separately. In 1984, the tax benefits of this structure were curtailed except for certain pre-existing stapled REITs. This section limits that exception to real property interests acquired on or before March 26, 1998. In general, for interests acquired after that date, the special treatment for pre-existing stapled REITs is eliminated.

6. Section 7003. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment. Under current law, dealers in securities are required to use a mark-to-market method of accounting for securities. A security is any evidence of indebtedness and a dealer is anyone who regularly buys or sells securities from or to customers in the ordinary course of business. This

section eliminates dealer mark-to-market treatment for evidences of indebtedness arising out of the sale of nonfinancial goods or services by a person whose principal activity is providing non-financial goods or services, if the indebtedness is held by that person or a related party at all times. This change will require some taxpayers to change their method of accounting. They will be allowed to spread the resulting adjustments over four years.

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches $2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan **(ESOP)** is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation,** effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains.** Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor - Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1326 (Proposed Senate Committee Substitute)
SHORT TITLE: Update IRC Reference/Conform Gift Tax
SPONSOR(S):

FISCAL IMPACT

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

($ Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
GENERAL FUND					
IRC Update	($6.97)	($4.01)	($10.70)	($18.53)	($33.64)
Net Economic Loss Carryforward		(3.70)	(3.70)	(3.70)	(16.00)
Total	($6.97)	($7.71)	($14.40)	($22.23)	($49.64)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. Sections 6 and 7 (net loss carryforward) are effective for taxable years beginning on or after July 1, 1999, and apply to losses incurred for taxable years beginning on or after July 1, 1993. Section 8 becomes effective for taxable years beginning on or after January 1, 2002. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The act (1) updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to September 1, 1998), (2) conforms to federal gift tax treatment of contributions to qualified tuition programs, (3) extends the corporate income tax carryforward for net economic losses from five years to fifteen years, but no more than 15% of taxable income can be offset in tax years 1999 through 2001, and (4) makes two technical changes in the revenue laws.

BACKGROUND: Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

Congress recently approved and the president signed the Internal Revenue Service Restructuring and Reform Act of 1998. This act made additional changes in both individual and corporate income tax laws that have a positive impact on the state General Fund.

ASSUMPTIONS AND METHODOLOGY:

IRC Update

North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is North Carolina's actual tax collections divided by national tax collections. (individual = .723% and corporate = .542%.) The charts on the following pages show the fiscal impact of the major federal tax changes on the state's General Fund.

Qualified Tuition Program

As for the gift tax change on qualified tuition programs, there should be little or no revenue loss to the state. The newly created College Vision Fund, administered by the State Education Assistance Authority, is designed for middle income taxpayers who save an average of $125 a month for their children's college education. While gifts exceeding $10,000 may be accepted by the fund, such contributions are not the norm. Those with the means to give more than $10,000 per year will probably invest in college trust funds bearing interest greater than the interest paid by the State Treasurer on the investments in the College Vision Fund.

Net Economic Loss Carryforwards

The Tax Research Division of the Department of Revenue estimates that extending the corporate income tax carryforward for net economic losses from 5 years to 15 years will cause a **revenue loss in the General Fund from $8 million to $16 million per year**. This estimate was based on corporate income tax returns from 1994 when 36,780 nontaxable corporations had $10.1 billion in unexpended net economic loss carryforwards. The Department could not be more precise due to the volatility of corporate taxable income and the lack of information concerning "expired" losses. The Department confirmed this estimate by reviewing a small sample of 1996 returns.

Section 6 of the bill requires that losses that are more than five years old may offset only 15% of any taxable income in tax years 1999, 2000, and 2001. In 2002, 100% of losses may once again be used. Since this section is effective for taxable years on or after January 1, 1999, it is assumed that the majority of corporations will file their annual returns three months and 15 days after the close of their fiscal year on January 1, 2000. This would put the first year revenue loss in FY 1999-00. There will be some short period returns filed due to mergers and other reasons, but there is no data to determine how many might occur in the spring of 1999 or FY 1998-99. Using the returns mentioned above, the Department of Revenue estimated that a 15% cap on the use of carryforward losses would produce a General Fund revenue loss of $3.7 million. For 2002 and beyond, this fiscal note uses the high end of the range ($16 million) to be conservative in estimating budget availability in future fiscal years.

INTERNAL REVENUE CODE UPDATE - STATE IMPACT

IRS Restructuring and Reform Act of 1998	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Individual & Corporate						
Clarify provisions relating to examination and collection activities; Offers-in- compromise	Generally 7/23/98	--	0.07	0.03	0.03	0.03
Authorize the Federal government to offset a Federal Income Tax refund to satisfy a past-due, legally owing state income tax debt	1/1/00		Gain, but no estimate available			
Clarifies the exclusion of meals provided for the convenience of employees on employer's premises	upon enactment	-0.11	-0.18	-0.18	-0.19	-0.20
Overrule Schmidt Baking with respect to vacation pay and severance and other types of compensation, with three year spread	1/1/98	4.55	5.40	2.47	1.67	0.85
Freeze grandfathered status of Stapled or Paired-Share REITS	1/1/98	0.01	0.02	0.03	0.05	0.08
Make certain trade receivables ineligible for Mark-to-Market Treatment	1/1/98	1.72	2.71	1.80	0.63	0.38
Taxpayer Relief Act of 1997						
Affects Individual Income Tax Only						
Exclude capital gain from sale of residence	5-6-97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	--	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1-1-98	-2.49	0.62	-2.50	-6.22	-13.23

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Establish education IRAs	1-1-98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8-21-96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1-1-97	-2.67	-1.81	--	--	--
Allow deduction of interest paid on qualified higher education loans	1-1-98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12-31-97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1-1-98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Corporate Income Tax Only						
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
TOTAL - IRC UPDATE		**-6.97**	**-4.01**	**-10.7**	**-18.53**	**-33.64**

Taxpayer Relief Act of 1997 - Other Provisions	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98	Negligible revenue effect				
Technical/Minor Impact						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance		No estimate available				
Recapture all depreciation on section 1250 property		No estimate available				
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred		No estimate available				
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97	Negligible revenue effect				
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97					
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97	No estimate available				
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97	Negligible revenue effect				
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97	No revenue impact				
Close partnership taxable year with respect to deceased partner	12/31/97	No revenue impact				
Deduct contributions made by ministers to retirement plans	12/31/97	Negligible revenue effect				
Clarify tax-free employer-provided employee meals	1/1/97	No revenue impact				
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99	No estimate available				

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98		Negligible revenue effect			
Repeal 30% gross income requirement for real estate investment trusts	8/5/97		Negligible revenue effect			

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE: September 10, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/24/98
Senate Finance Committee Substitute Adopted 8/20/98

Short Title: Tobacco Settlements Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA CITIZENS FROM LOSSES DUE TO FEDERAL TOBACCO LEGISLATION OR TOBACCO LITIGATION AND TO PROVIDE THAT FUNDS RECEIVED DUE TO SETTLEMENTS AND RELATED CONGRESSIONAL LEGISLATION SHALL BE SPENT ONLY PURSUANT TO APPROPRIATION BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

(1) In June 1997, a tentative settlement was reached in litigation between United States cigarette manufacturers and the attorneys general of 40 states.

(2) Dozens of bills were introduced in Congress dealing with this settlement, and several of those bills would have provided financial assistance to tobacco farmers and others who depend on tobacco for their livelihoods.

(3) Some of these proposed bills would also have provided for block grants and other funds for states to use for related purposes.

(4) Congress is unlikely to enact legislation on this subject during 1998.

(5) Tobacco litigation and federal legislation providing for settlement of the litigation have the potential to affect the interests of tobacco farmers and others who depend on tobacco for their livelihoods.

Section 2. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-16.4. Settlement Reserve Fund.**

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless prohibited by court order, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement or final order or judgment of a court shall be credited to the Settlement Reserve Fund."

Section 3. It is the intent of the General Assembly that federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be used pursuant to specific appropriation for healthcare costs, tobacco transition assistance, and other purposes related to protecting the interest of North Carolina tobacco farmers, allotment holders, workers (including agricultural, commercial, and manufacturing workers), and other North Carolina citizens.

Section 4. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-2.5. Attorney General to report payment of public monies pursuant to settlement agreements and final court orders.**

(a) The Attorney General shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Committees of the Senate and House of Representatives on any payments received pursuant to a settlement agreement or final order or judgment of a court and credited to the Settlement Reserve Fund in accordance with G.S. 143-16.4. The Attorney General shall also report on the terms or conditions of payment set forth in the agreement or order. The Attorney General shall submit a written report to the Fiscal Research Division of the General Assembly.

(b) This section applies only to executed settlement agreements and final orders or judgments of a court and does not affect the authority of the Attorney General to negotiate the settlement of cases in which the State or a State department, agency, institution, or officer is a party."

Section 5. It is the intent of the General Assembly to monitor the progress of federal tobacco settlement legislation and to enact appropriate income tax exemptions for financial assistance payments that may later be enacted by Congress for tobacco farmers and for others who depend on tobacco for their livelihoods. In addition, it is the intent of the General Assembly to monitor the status of tobacco litigation in this State and other states and to act to protect the interests of North

Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Committee Substitute #2 Favorable 6/24/98
Senate Finance Committee Substitute Adopted 8/20/98
Proposed Senate Committee Substitute H1248-PCS6472-LC

Short Title: Tobacco Settlements Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA CITIZENS FROM LOSSES DUE TO FEDERAL TOBACCO LEGISLATION OR TOBACCO LITIGATION AND TO PROVIDE THAT FUNDS RECEIVED DUE TO TOBACCO SETTLEMENTS AND RELATED CONGRESSIONAL LEGISLATION SHALL BE SPENT PURSUANT TO APPROPRIATION BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

(1) In June 1997, a tentative settlement was reached in litigation between United States cigarette manufacturers and the attorneys general of 40 states.

(2) Dozens of bills were introduced in Congress dealing with this settlement, and several of those bills would have provided financial assistance to tobacco farmers and others who depend on tobacco for their livelihoods.

(3) Some of these proposed bills would also have provided for block grants and other funds for states to use for related purposes.

(4) Congress is unlikely to enact legislation on this subject during 1998.

(5) Tobacco litigation and federal legislation providing for settlement of the litigation have the potential to affect the interests of tobacco farmers and others who depend on tobacco for their livelihoods.

Section 2. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-16.4. Settlement Reserve Fund.**

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund."

Section 3. It is the intent of the General Assembly to enact appropriate tax relief for financial assistance payments that may later be enacted by Congress for tobacco farmers and for others who depend on tobacco for their livelihoods. In addition, it is the intent of the General Assembly to monitor the status of tobacco litigation in this State and other states and to act to protect the interests of North Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods.

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

EXPLANATION OF HOUSE BILL 1248 (PCS):
Tobacco Settlements Payments

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: September 14, 1998
SPONSOR: Representative Baker

House Bill 1248 makes the following three changes relating to possible federal legislation that may be enacted as part of a tobacco litigation settlement. The bill is effective when it becomes law.

1. It provides legislative findings and statements of intent regarding potential federal financial assistance to farmers and others who depend on tobacco for their livelihood.
2. It provides that any block grants and other federal payments provided to North Carolina by Congress as part of the tobacco settlement may be spent only by appropriation of the General Assembly
3. It provides that any significant court settlement payments or payments pursuant to litigation on any subject may be spent only by appropriation of the General Assembly.

In June 1997, United States tobacco companies reached a tentative settlement of litigation initiated by the attorneys general of 40 states. The settlement would have required the companies to pay damages and would have limited their future liability. In response to the tentative settlement, many bills were introduced in Congress to establish the detailed rights and obligations of the parties. The legislation would have profound effects on the tobacco industry at all levels. Elimination of the federal tobacco program was proposed, and several of the bills proposed financial assistance to tobacco farmers, tobacco quota owners, tobacco workers, and others involved in the tobacco industry. This financial assistance would be designed to replace income these farmers and others might lose due to changes in the tobacco industry. In addition, some of the federal bills proposed to distribute funds to States in the form of block grants or appropriations. Federal tobacco settlement legislation seemed likely as of May 1998 but has since stalled.

Section 1 of the proposed committee substitute sets out the above facts as findings of the General Assembly. These findings form the basis for the remainder of the bill.

Section 2 of the bill establishes a restricted reserve in the General Fund called the Settlement Reserve Fund. Monies in this reserve may be spent only by specific appropriation of the General Assembly. The bill provides that, unless prohibited by federal law, any federal funds North Carolina receives pursuant to tobacco settlement legislation will be credited to the Settlement Reserve Fund. In addition, unless prohibited by court order, any funds received pursuant to a tobacco litigation settlement agreement will be credited to the Settlement Reserve Fund. These requirements will allow the General Assembly to control the expenditure of funds received pursuant to litigation settlements and court judgments. This section is similar to Section 18.7 of the House Budget bill, Senate Bill 1366, 5th Edition.

Section 3 of the bill states the General Assembly's intent to monitor the progress of federal tobacco settlement legislation and provide appropriate tax relief for financial assistance payments to tobacco farmers and others who depend on tobacco for their livelihoods. It also states the intent of the General Assembly to monitor any tobacco litigation and to protect the interests of North Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1248 (Senate Proposed Committee Substitute)

SHORT TITLE: Exempt Tobacco Assistance Payments

SPONSOR(S):

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Settlement Reserve Fund	**(see ASSUMPTIONS AND METHODOLOGY)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Attorney General; Department of Agriculture and Consumer Services; Department of Commerce

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

BILL SUMMARY: The act establishes a Settlement Reserve Fund for any federal funds the state receives pursuant to tobacco settlement legislation and any funds greater than $75,000 the state receives from litigation. The Attorney General is to keep the General Assembly informed of payments credited to the Fund. The act directs all federal funds received by the state to be divided evenly between the Department of Agriculture and Consumer Services and the Department of Commerce to be used for tobacco transition assistance and related purposes. The act states that the General Assembly will monitor federal tobacco legislation and will enact appropriate income tax exemptions for financial assistance payments that Congress may enact for tobacco farmers and others who depend on tobacco for their livelihoods.

ASSUMPTIONS AND METHODOLOGY: This bill has no fiscal impact because it provides only legislative intent on how tobacco settlement funds will be handled by the state. The bill does not appropriate any funds nor does it exempt any taxable income at this time. As of August 18, 1998, there were 50 bills in the 105th U. S. Congress dealing with the June 1997 tobacco settlement between U.S. cigarette manufacturers and 40 states' attorney generals. Six of these bills, including Senator McCain's SB 1415, provide market transition assistance to tobacco quota holders, growers, workers, and producers. SB 1415 was debated for weeks by the U.S. Senate before it was returned to the Senate Committee on Commerce, Science and Transport on June 17.

At this point, no federal legislation dealing with compensation to the tobacco producing community is imminent.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington
DATE: August 18, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1737*
Committee Substitute Favorable 6/17/98

Short Title: NCSU Centennial Campus. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS STATE PROPERTY CAN BE LEASED TO NINETY-NINE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund.**

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative

method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term 'Centennial Campus' ~~shall mean that real property and appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other ~~that~~ real property and appurtenant facilities designated by the Board of Governors as part of the Centennial ~~Campus of the Institution.~~ Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus."

Section 3. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board ~~is authorized, subject to the requirements of this Article:~~ may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing ~~facilities;~~ facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the ~~same;~~ same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or ~~projects;~~ projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing ~~facilities;~~ facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the provisions of ~~G.S. 143-341;~~ G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their ~~compensation;~~ compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this ~~Article;~~ Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are ~~provided; and~~ provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 5. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of ~~State; provided that if the proposed disposition is a~~

~~sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.~~ State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. -- If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

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

North Carolina General Assembly
Legislative Services Office

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

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

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

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

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

To: Senate Finance Committee
From: Sara Kamprath, Legislative Analyst for the Senate Education Committee
Date: September 15, 1998
Re: **HB 1737 NCSU Centennial Campus (Second Edition)**

Current Law	**Proposed Changes to Current Law under HB 1737 (by Section)**
Centennial Campus means the real property and appurtenant facilities designated by the UNC Board of Governors.	Section 2 amends the definition of Centennial Campus in G.S. 116-198.33(4) to specifically include the following properties in addition to all other real property and appurtenant facilities designated by the UNC Board of Governors: (1) the College of Veterinary Medicine (2) the University Club (3) the Agricultural Turf Grass Management Program (4) the former Dix Hospital properties and other contiguous parcels of property The designated properties do not have to be contiguous with the Centennial Campus.
G.S. 146-27 provides that every sale, lease or rental of State-owned land or land owned by a State agency shall be made by the Department of Administration and then approved by the Governor and Council of State. G.S. 143-341(4) provides that the Department of Administration has the authority to make all leases and rentals of State-owned buildings or buildings owned by a State agency with the approval of the Governor and Council of State.	Section 3 amends G.S. 116-198.34(5) by deleting the 40 year limit on land and building leases at Centennial Campus. Further, rental agreements for space in buildings on Centennial Campus made for 10 years or less do not require the approval of the Governor and the Council of State but are subject to approval by the UNC Board of Governors. All other acquisitions and dispositions made under this subdivision are subject to G.S. 143-341 and Chapter 146. Adds G.S. 116-198.34(8a) to clarify that the UNC Board of Governors has the authority to designate the real property and appurtenant facilities that are part of Centennial Campus.

Current Law	Proposed Changes to Current Law under HB 1737 (by Section)
G.S. 146-30 requires that the service charge from any lease of State land shall go into the State Land Fund. However, G.S. 116-36.5 requires that all funds from the development of the Centennial Campus shall go into the Centennial Campus Trust Fund.	Section 4 amends G.S. 146-30 by adding a new subsection to provide that no service charge shall be deducted and paid into the State Land Fund from the proceeds of any lease of State lands designated as part of the Centennial Campus.
G.S. 146-27 does not provide a limit on the length of the lease or rental of land owned by the State.	Section 5 amends G.S. 146-27 to provide that a lease or rental of land owned by the State may not exceed 99 years.

House Bill 1737 would take effect when it becomes law.

H1737-SMRJ-001

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1737 (Second Edition)

SHORT TITLE: NCSU Centennial Campus

SPONSOR(S): Rep. Dickson

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	(see ASSUMPTIONS AND METHODOLOGY)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State University, UNC Board of Governors

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

BILL SUMMARY: The bill does the following: 1) expands the Centennial Campus at North Carolina State University to include the College of Veterinary Medicine and surrounding land, 2) clarifies that the UNC Board of Governors shall designate what real estate and facilities comprise the Centennial Campus, 3) deletes the 40 year limit on land and building leases at Centennial Campus, 4) allows the UNC Board of Governors to approve leases of buildings on the Centennial Campus for periods of 10 years or less without Council of State approval, 5) exempts Centennial Campus real estate transactions from service charges that are made to the State Land Fund, 6) establishes that a lease or rental of land owned by the state may not exceed a period of 99 years, and 7) instructs agencies to consult with the Joint Legislative Commission on Governmental Operations upon the sale or the receipt of a gift of land valued at $25,000 or more.

ASSUMPTIONS AND METHODOLOGY:

State Land Fund

Section 4 of the bill exempts the Centennial Campus from paying a service charge to the State Land Fund for each of its lease, rental, or easement transactions. There is no fiscal impact from this change, because the Centennial Campus has never paid any fees to the Fund. The bill simply

removes a conflict between two statutes. G.S. 146-30 requires that a service charge be paid for all land or lease transactions, while G.S. 116-36.5 requires that all moneys from development of the Centennial Campus shall go into the Centennial Campus Trust Fund.

Property Tax

The bill has the potential to remove additional land and structures from the property tax rolls in Wake County if the UNC Board of Governors uses the power granted in section 2 of the bill to expand the Centennial Campus to noncontiguous land not currently owned by NC State University. However, under current law, the county could recoup its tax loss in several ways. First, if the Campus land is leased at below market value to a private firm, then the leased land can be taxed. Second, if a private firm leases land from the campus at market value and builds its own building, then Wake county may levy property tax only on the building and its furnishings and equipment. Third, if a private firm leases the land and building from the Campus, then only the furnishings and equipment will be subject to property tax.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:
DATE: August 31, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1633
Committee Substitute Favorable 9/3/98
Committee Substitute #2 Favorable 9/9/98

Short Title: Spruce Pine Boundary Correction. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CORRECTION OF AN ERROR IN A 1921 SURVEY OF AN ANNEXATION TO THE TOWN OF SPRUCE PINE.

The General Assembly of North Carolina enacts:

Section 1. (a) The corporate limits of the Town of Spruce Pine are reduced by excluding any parcels which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921.

(b) Notwithstanding subsection (a) of this section, the owners of any of such parcels may make written request to the Clerk of the Town of Spruce Pine that their parcel remain in the corporate limits. Said request must be made no later than 15 February 1999. Upon receipt of such request or requests the Town of Spruce Pine may by ordinance provide for all or part of those parcels (and any streets, roads and rights-of-way used by those parcels for access) to be and remain within the corporate limits of the Town of Spruce Pine. Upon the adoption of said ordinance those parcels included within the Ordinance together with the streets, roads and rights-of-way included therein shall be included within the corporate limits of the Town of Spruce Pine. Any such Ordinance shall be adopted on or before June 30, 1999.

(c) Except as provided by Section 2 of this act, this section becomes effective February 11, 1921, except that the areas covered by ordinance adopted under subsection (b) of this section shall be considered to have been in the corporate limits only from and after June 30, 1999.

Section 2. (a) Notwithstanding Section 1 of this act, the Town Council of the Town of Spruce Pine may submit to an election of the registered voters living within the corporate limits of the Town of Spruce Pine, including those registered voters within the entire area described in Chapter 27, Private Laws of 1921, the question of whether or not the corporate limits of that town shall remain as set out in Chapter 27, Private Laws of 1921.

Any such election shall be called by resolution of the Town Council adopted on or before February 15, 1999, and shall be conducted on a date no later than June 15, 1999. The election shall be held in accordance with general law.

(b) The question on the ballot shall be:

"[ ] YES [ ] NO

Shall the corporate limits of the Town of Spruce Pine as established by Chapter 27, 1921 Private Laws of North Carolina, be changed by deleting from the corporate limits all those parcels of real property which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921?"

(c) Should the Town Council of the Town of Spruce Pine fail to call for such special election by the February 15, 1999, deadline provided by subsection (a) of this section, or should the election be held and the majority of votes be cast "YES" on the question, then Section 1 of this act becomes effective in accordance with its terms.

(d) Should the election be held and the majority of votes are not cast "YES", then Section 1 of this act is repealed and is of no effect, and the corporate limits of the Town of Spruce Pine shall remain as described in Chapter 27, Private Laws of 1921, except as changed by other acts of the General Assembly or in accordance with law.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ALBX-2B

Date_____,1998

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

moves to amend the bill on page 1, line 3, by inserting the following immediately before the period: "AND TO CLARIFY THE BOUNDARIES OF THE TOWN OF MOCKSVILLE BY ANNEXING AN AREA WHOLLY SURROUNDED BY THE CORPORATE LIMITS, SOME OF WHICH AN ACCURATE SURVEY HAS NOW SHOWN TO HAVE BEEN ANNEXED IN 1895 BUT NOT RECOGNIZED AS PART OF THE TOWN UNTIL A RECENT SURVEY"

further moves to amend the bill on page 2, line 26, by adding the following between lines 26 and 27:

"Section 2.1. (a) The corporate limits of the Town of Mocksville are extended by including the following described areas: All of Twinbrook Acres Subdivision, as shown in Plat Book 5, Page 51, Davie County Registry (including right-of-way) which on September 1, 1998 was entirely surrounded by the corporate limits of the Town.

(b) This section becomes effective June 30, 1999, and any area which decsribed in subsection (a) of this section which might have also been annexed by Chapter 172, Private Laws of 1895 shall be considered to be in the corporate limits of the Town only from and after June 30, 1999."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ALBX-2B

moves to amend the bill on page 2, line 9, by adding the following immediately after the word "law":

, if the election is conducted at the same time as the 1998 general election, for the election called under this section:

(1) In applying G.S. 163-33(8), "10 days" is substituted for "20 days", and "10-day" is substituted for "20-day".

(2) If absentee ballots are otherwise allowed by law, the Town Council may provide that absentee ballots shall not be used"

SIGNED Robert D. Shaw
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1633
Committee Substitute Favorable 9/3/98
Committee Substitute #2 Favorable 9/9/98
Proposed Senate Committee Substitute H1633-PCS2429-LB

Short Title: Spruce Pine Boundary Correction. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CORRECTION OF AN ERROR IN A 1921 SURVEY OF AN ANNEXATION TO THE TOWN OF SPRUCE PINE AND TO CLARIFY THE BOUNDARIES OF THE TOWN OF MOCKSVILLE BY ANNEXING AN AREA WHOLLY SURROUNDED BY THE CORPORATE LIMITS, SOME OF WHICH AN ACCURATE SURVEY HAS NOW SHOWN TO HAVE BEEN ANNEXED IN 1895 BUT NOT RECOGNIZED AS PART OF THE TOWN UNTIL A RECENT SURVEY.

The General Assembly of North Carolina enacts:

Section 1. (a) The corporate limits of the Town of Spruce Pine are reduced by excluding any parcels which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921.

(b) Notwithstanding subsection (a) of this section, the owners of any of such parcels may make written request to the Clerk of the Town of Spruce Pine that their parcel remain in the corporate limits. Said request must be made no later than 15 February 1999. Upon receipt of such request or requests the Town of Spruce Pine may by ordinance provide for all or part of those parcels (and any streets, roads and rights-of-way used by those parcels for access) to be and remain within the corporate limits of the Town of Spruce Pine. Upon the adoption of said ordinance those parcels included within the Ordinance together with the streets, roads and rights-of-

way included therein shall be included within the corporate limits of the Town of Spruce Pine. Any such Ordinance shall be adopted on or before June 30, 1999.

(c) Except as provided by Section 2 of this act, this section becomes effective February 11, 1921, except that the areas covered by ordinance adopted under subsection (b) of this section shall be considered to have been in the corporate limits only from and after June 30, 1999.

Section 2. (a) Notwithstanding Section 1 of this act, the Town Council of the Town of Spruce Pine may submit to an election of the registered voters living within the corporate limits of the Town of Spruce Pine, including those registered voters within the entire area described in Chapter 27, Private Laws of 1921, the question of whether or not the corporate limits of that town shall remain as set out in Chapter 27, Private Laws of 1921.

Any such election shall be called by resolution of the Town Council adopted on or before February 15, 1999, and shall be conducted on a date no later than June 15, 1999. The election shall be held in accordance with general law, except if the election is conducted at the same time as the 1998 general election, for the election called under this section:

(1) In applying G.S. 163-33(8), "10 days" is substituted for "20 days", and "10-day" is substituted for "20-day".

(2) If absentee ballots are otherwise allowed by law, the Town Council may provide that absentee ballots shall not be used.

(b) The question on the ballot shall be:

"[ ] YES [ ] NO

Shall the corporate limits of the Town of Spruce Pine as established by Chapter 27, 1921 Private Laws of North Carolina, be changed by deleting from the corporate limits all those parcels of real property which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921?"

(c) Should the Town Council of the Town of Spruce Pine fail to call for such special election by the February 15, 1999, deadline provided by subsection (a) of this section, or should the election be held and the majority of votes be cast "YES" on the question, then Section 1 of this act becomes effective in accordance with its terms.

(d) Should the election be held and the majority of votes are not cast "YES", then Section 1 of this act is repealed and is of no effect, and the corporate limits of the Town of Spruce Pine shall remain as described in Chapter 27, Private Laws of 1921, except as changed by other acts of the General Assembly or in accordance with law.

Section 2.1. (a) The corporate limits of the Town of Mocksville are extended by including the following described areas: All of Twinbrook Acres Subdivision, as shown in Plat Book 5, Page 51, Davie County Registry (including right-of-way) which on September 1, 1998, was entirely surrounded by the corporate limits of the Town.

(b) This section becomes effective June 30, 1999, and any area described in subsection (a) of this section which might have also been annexed by Chapter 172, Private Laws of 1895 shall be considered to be in the corporate limits of the Town only from and after June 30, 1999.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

TUESDAY, SEPTEMBER 15TH — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Greene	ACS
Deborah Bryan	AIA
Randolph Cloud	Cloud + Assoc
Cam Cover	BPMHL
[illegible]	WCSR
Alicia Gregory	Poyner & Spruill
Crissy Parker	Bone & Associates
George Reed	NC Council of Churches
R. Paul Wilms	NCMBA
Mike Carpenter	NCMBA
Mark Dessel	Capitol Group

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

TUESDAY, SEPTEMBER 15TH — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Roy	NCDOT
Willie Riddick	DOR
Greg Radford	DOR
Billy Davis	DOR
Sabra Faires	Dept. of Revenue
Lennie Collins	Dept of Revenue
John M May	NC CWA
Kevin Howell	NCBA
Andy Vance	DOJ
Hampton Dellinger	DOJ
Steve Brotherton	UNC-GA / NCSU Ag Rpons
Jan Ramquist	NCATA

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

TUESDAY, SEPTEMBER 15TH — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Steve Woodson	NCFB
Paula Gupton	NCFB
David Simmons	265 Alley, DA
Alan Miles	Bailey & Dixon LLP
Dany [illegible]	IBM
SAM JOHNSON	ATTY
Tommy Hamelon	Consultant
VL McBride	[illegible]
Darrell Aumed	SEANC
Steve Keene	NCMedSoc.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

TUESDAY, SEPTEMBER 15TH — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marsha Glass	DOA
GEORGE WORSLEY	NC STATE UNIVERSITY
Clifton Mulcahy	UNC GA
KEVIN MacNAUGHTON	UNC GA
Oscar Fletcher	NC State
Charlie Moreland	NC State
Gene Ainsworth	RJR
Sandy Sands	WCSR
George Stephanopoulos	Wagner PC
Andy Sands	WCSR
Melissa Lovell	DOJ

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Tuesday, September 15, 1998

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

FAVORABLE

H.B.(CS)**1737** NCSU Centennial Campus.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1326** Update IRC Reference/Conform Gift Tax.
Draft Number: PCSX6473
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)**1248** Tobacco Settlements Payments.
Draft Number: PCS6472
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: HB 1248, HB 1326, HB 1737

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

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

Thursday, September 17, 1998

SENATOR KERR,
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)**1260** Code Officials Cont. Ed.

Draft Number:	PCS1618
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1633** Spruce Pine Boundary Correction

Draft Number:	PCS2429
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, SEPTEMBER 17, 1998

9:00 A.M. - ROOM 544

CALL MEETING TO ORDER - SEN. HOYLE

BILLS TO BE CONSIDERED:

HB 1260 - Code Officials Cont. Ed. - Rep. Ives
HB 1633 - Spruce Pine Boundary Correction - Rep. Buchanan

SENATE FINANCE COMMITTEE

THURSDAY, SEPTEMBER 17, 1998

9:00 A.M. - ROOM 544 LOB

The Senate Finance Committee met on Tursday, September 17, 1998 at 9:00 A.M. in Room 544 LOB. There were 15 Members of the Committee present. Senator John Kerr, Co-chairman, called the Meeting to order.

H. B. 1260 - Code Officials Cont. Ed.

Senator Hartsell moved for adoption of the proposed committee substitute bill for the purpose of discussion, motion passed. Martha Harris, Staff Committee Counsel, explained the pcs. Senator Dannelly moved for a "favorable" report, motion passed. (Copy of Bill, Proposed Committee Substitute Bill and Explanation are included in Minutes).

H. B. 1633 - Spruce Pine Boundard Correction

Mr. Gerry Cohen, Director of Bill Drafting, explained the proposed committee substitute bill. Senator Soles moved for adoption of pcs for discussion, motion passed. Senator Cochrane moved to give a "favorable" report to the pcs, motion passed. (Copy of Bill and Proposed Committee Substitute Bill are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report is Attachment #2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1260
Committee Substitute Favorable 6/2/98

Short Title: Code Officials Cont. Ed. (Public)

Sponsors:

Referred to:

May 13, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA CODE OFFICIALS QUALIFICATION BOARD TO REQUIRE CODE-ENFORCEMENT OFFICIALS TO PARTICIPATE IN PROFESSIONAL DEVELOPMENT PROGRAMS AND TO RESTORE THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT FLOODPLAIN MANAGEMENT ORDINANCES.

The General Assembly of North Carolina enacts:

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

"**§ 143-151.13A. Professional development program for code-enforcement officials.**

(a) The Board may establish professional development requirements for code-enforcement officials as a condition of the renewal or reactivation of their certificates. Such professional development shall be oriented to assist inspectors in achieving and maintaining professional competence in their enforcement of the code and assuring the health, safety, and welfare of the citizens of North Carolina. Criteria adopted by the Board for a professional development program may include:

(1) The content of professional development courses;

(2) Accreditation of professional development course sponsors and programs;

(3) Computation of credit hours;

(4) Record keeping and other administrative procedures; and

(5) Sanctions for noncompliance.

(b) The Board may require, as a condition of renewal of a certificate, that each individual holding a standard or a limited certificate complete professional development courses as prescribed by the Board. The professional development coursework requirement shall not exceed 24 hours in any three-year period.

(c) The Board may require each individual who earns a standard certificate under the prequalification program established pursuant to G.S. 143-151.13(d) to complete professional development coursework, not to exceed 16 hours in each technical area of certification, within one year of that individual becoming employed by a city or county inspection department.

(d) As a condition of reactivating a standard or limited certificate, the Board may require the completion of professional development coursework within one year of reemployment as a code-enforcement official as follows:

(1) Individuals who have been on inactive status and who have been out of the inspection field for more than two years shall complete professional development coursework not to exceed 16 hours for each technical area in which the individual is certified.

(2) Individuals who have been on inactive status for more than two years but who have remained active in the inspection field shall complete professional development coursework not to exceed 12 hours for each technical area in which the individual is certified.

(3) Individuals who have been on inactive status for two years or less and who have remained active in the inspection field to complete professional development coursework not to exceed eight hours for each technical area in which the individual is certified.

Section 2. G.S. 143-151.17(a) reads as rewritten:

"(a) The Board shall have the power to suspend, revoke or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;

(2) Has obtained certification through fraud, deceit, or perjury;

(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code;

(4) Has defrauded the public or attempted to do so;

(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible ~~direction; or,~~ direction;

(6) Has been guilty of willful misconduct, gross negligence or gross ~~incompetence.~~ incompetence; or

(7) Has failed to comply with the professional development requirements established by the Board under this Article."

Section 3. G.S. 58-6-25(d) reads as rewritten:

"(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The

proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for the following:

(1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.

(2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.

(3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

(4) Money appropriated to the Department of Insurance for the code-enforcement officials professional development requirements under G.S. 143-151.13A."

Section 4. The North Carolina Code Officials Qualification Board may adopt temporary rules to implement this act as a recent act of the General Assembly under G.S. 150B-21.1(a)(2).

Section 5. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements,

substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

Section 6. Local floodplain management ordinances adopted as of the effective date of Section 5 of Session Laws 1997-26 continue in effect until repealed.

Section 7. There is appropriated from the Department of Insurance Fund in G.S. 58-6-25 to the Department of Insurance for the Code Officials Qualification Board the sum of one hundred thousand dollars ($100,000) for fiscal year 1998-99 for the purpose of developing and implementing the code officials professional development program under G.S. 143-151.13A. This appropriation is contingent upon a decision by the Board to establish the program as prescribed in this act.

Section 8. Section 7 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1260
Committee Substitute Favorable 6/2/98
Proposed Senate Committee Substitute H1260-PCS1618-LC

Short Title: Floodplain Management. (Public)

Sponsors:

Referred to:

May 13, 1998

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT FLOODPLAIN MANAGEMENT ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage,

acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

Section 2. Local floodplain management ordinances adopted as of the effective date of Section 5 of Session Laws 1997-26 continue in effect until repealed.

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

EXPLANATION OF HOUSE BILL 1260 (PCS):
Floodplain Management

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: September 16, 1998
SPONSOR: Representative Ives

The proposed committee substitute for House Bill 1260 restores the authority of local governments to adopt local floodplain management regulations. Prior to 1997, local governments relied on the "local building code" provision in the building code law as authority for the adoption of floodplain management regulations. The "local building code" provision (which allowed for local variation in the State Building Code) was repealed in 1997 as part of the effort to create a 3-year building code cycle. Because the State Building Code does not meet the minimum construction requirements of the federal National Flood Insurance Program, local governments may no longer enact local regulations in compliance with the federal program. Thus, local governments are ineligible to participate in the flood insurance program. Instead of immediately removing North Carolina local governments from the program, the Federal Emergency Management Agency has granted North Carolina a grace period to restore local governments' authority to adopt ordinances that comply with the requirements of the flood insurance program. According to information provided by the County Commissioners Association, if North Carolina were removed from the National Flood Insurance Program, property in floodplains would no longer be eligible for emergency assistance from federal agencies because eligibility for the assistance is conditioned on eligibility for flood insurance.

Section 1 of the bill authorizes local governments to adopt floodplain management regulations that will comply with the requirements of the National Flood Insurance Program. Section 2 of the bill retroactively validates floodplain management regulations that were in effect prior to the changes enacted in 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1633
Committee Substitute Favorable 9/3/98
Committee Substitute #2 Favorable 9/9/98

Short Title: Spruce Pine Boundary Correction. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CORRECTION OF AN ERROR IN A 1921 SURVEY OF AN ANNEXATION TO THE TOWN OF SPRUCE PINE.

The General Assembly of North Carolina enacts:

Section 1. (a) The corporate limits of the Town of Spruce Pine are reduced by excluding any parcels which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921.

(b) Notwithstanding subsection (a) of this section, the owners of any of such parcels may make written request to the Clerk of the Town of Spruce Pine that their parcel remain in the corporate limits. Said request must be made no later than 15 February 1999. Upon receipt of such request or requests the Town of Spruce Pine may by ordinance provide for all or part of those parcels (and any streets, roads and rights-of-way used by those parcels for access) to be and remain within the corporate limits of the Town of Spruce Pine. Upon the adoption of said ordinance those parcels included within the Ordinance together with the streets, roads and rights-of-way included therein shall be included within the corporate limits of the Town of Spruce Pine. Any such Ordinance shall be adopted on or before June 30, 1999.

(c) Except as provided by Section 2 of this act, this section becomes effective February 11, 1921, except that the areas covered by ordinance adopted under subsection (b) of this section shall be considered to have been in the corporate limits only from and after June 30, 1999.

Section 2. (a) Notwithstanding Section 1 of this act, the Town Council of the Town of Spruce Pine may submit to an election of the registered voters living within the corporate limits of the Town of Spruce Pine, including those registered voters within the entire area described in Chapter 27, Private Laws of 1921, the question of whether or not the corporate limits of that town shall remain as set out in Chapter 27, Private Laws of 1921.

Any such election shall be called by resolution of the Town Council adopted on or before February 15, 1999, and shall be conducted on a date no later than June 15, 1999. The election shall be held in accordance with general law.

(b) The question on the ballot shall be:

"[ ] YES [ ] NO

Shall the corporate limits of the Town of Spruce Pine as established by Chapter 27, 1921 Private Laws of North Carolina, be changed by deleting from the corporate limits all those parcels of real property which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921?"

(c) Should the Town Council of the Town of Spruce Pine fail to call for such special election by the February 15, 1999, deadline provided by subsection (a) of this section, or should the election be held and the majority of votes be cast "YES" on the question, then Section 1 of this act becomes effective in accordance with its terms.

(d) Should the election be held and the majority of votes are not cast "YES", then Section 1 of this act is repealed and is of no effect, and the corporate limits of the Town of Spruce Pine shall remain as described in Chapter 27, Private Laws of 1921, except as changed by other acts of the General Assembly or in accordance with law.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1633
Committee Substitute Favorable 9/3/98
Committee Substitute #2 Favorable 9/9/98
Proposed Senate Committee Substitute H1633-PCS2429-LB

Short Title: Spruce Pine Boundary Correction. (Local)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CORRECTION OF AN ERROR IN A 1921 SURVEY OF AN ANNEXATION TO THE TOWN OF SPRUCE PINE AND TO CLARIFY THE BOUNDARIES OF THE TOWN OF MOCKSVILLE BY ANNEXING AN AREA WHOLLY SURROUNDED BY THE CORPORATE LIMITS, SOME OF WHICH AN ACCURATE SURVEY HAS NOW SHOWN TO HAVE BEEN ANNEXED IN 1895 BUT NOT RECOGNIZED AS PART OF THE TOWN UNTIL A RECENT SURVEY.

The General Assembly of North Carolina enacts:

Section 1. (a) The corporate limits of the Town of Spruce Pine are reduced by excluding any parcels which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921.

(b) Notwithstanding subsection (a) of this section, the owners of any of such parcels may make written request to the Clerk of the Town of Spruce Pine that their parcel remain in the corporate limits. Said request must be made no later than 15 February 1999. Upon receipt of such request or requests the Town of Spruce Pine may by ordinance provide for all or part of those parcels (and any streets, roads and rights-of-way used by those parcels for access) to be and remain within the corporate limits of the Town of Spruce Pine. Upon the adoption of said ordinance those parcels included within the Ordinance together with the streets, roads and rights-of-

way included therein shall be included within the corporate limits of the Town of Spruce Pine. Any such Ordinance shall be adopted on or before June 30, 1999.

(c) Except as provided by Section 2 of this act, this section becomes effective February 11, 1921, except that the areas covered by ordinance adopted under subsection (b) of this section shall be considered to have been in the corporate limits only from and after June 30, 1999.

Section 2. (a) Notwithstanding Section 1 of this act, the Town Council of the Town of Spruce Pine may submit to an election of the registered voters living within the corporate limits of the Town of Spruce Pine, including those registered voters within the entire area described in Chapter 27, Private Laws of 1921, the question of whether or not the corporate limits of that town shall remain as set out in Chapter 27, Private Laws of 1921.

Any such election shall be called by resolution of the Town Council adopted on or before February 15, 1999, and shall be conducted on a date no later than June 15, 1999. The election shall be held in accordance with general law, except if the election is conducted at the same time as the 1998 general election, for the election called under this section:

(1) In applying G.S. 163-33(8), "10 days" is substituted for "20 days", and "10-day" is substituted for "20-day".

(2) If absentee ballots are otherwise allowed by law, the Town Council may provide that absentee ballots shall not be used.

(b) The question on the ballot shall be:

"[ ] YES [ ] NO

Shall the corporate limits of the Town of Spruce Pine as established by Chapter 27, 1921 Private Laws of North Carolina, be changed by deleting from the corporate limits all those parcels of real property which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921?"

(c) Should the Town Council of the Town of Spruce Pine fail to call for such special election by the February 15, 1999, deadline provided by subsection (a) of this section, or should the election be held and the majority of votes be cast "YES" on the question, then Section 1 of this act becomes effective in accordance with its terms.

(d) Should the election be held and the majority of votes are not cast "YES", then Section 1 of this act is repealed and is of no effect, and the corporate limits of the Town of Spruce Pine shall remain as described in Chapter 27, Private Laws of 1921, except as changed by other acts of the General Assembly or in accordance with law.

Section 2.1. (a) The corporate limits of the Town of Mocksville are extended by including the following described areas: All of Twinbrook Acres Subdivision, as shown in Plat Book 5, Page 51, Davie County Registry (including right-of-way) which on September 1, 1998, was entirely surrounded by the corporate limits of the Town.

(b) This section becomes effective June 30, 1999, and any area described in subsection (a) of this section which might have also been annexed by Chapter 172, Private Laws of 1895 shall be considered to be in the corporate limits of the Town only from and after June 30, 1999.

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

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9/17/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Wilms	NCHBA
Cam Cover	BPMHL
Jim Blackburn	NC Association of County Commissioners
Steve Woodson	NC Farm Bureau
Andy Lonart	N.C.L.M.
Alicia Gregory	Poyner & Spruill
Don Beason	The Capital Group
Mike Carpenter	NCCMSA
[redacted]	[redacted]
Doug Rogers	NCDOT
Sheila McKenney	NC DOT

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, September 17, 1998

SENATOR KERR,
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)**1260** Code Officials Cont. Ed.

Draft Number:	PCS1618
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1633** Spruce Pine Boundary Correction

Draft Number:	PCS2429
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, SEPTEMBER 23, 1998

9 O'CLOCK A.M. - ROOM 643

HB 20 - Increase Charity Tax Credit - Rep. McMahan

HB 1126 - No Sales Tax on Pay Phones - Rep. Miner

HB 1429 - Set Reg. Fees/Company Exams - Rep. C. Wilson

HB 1448 - 1998 Marine Fisheries Amendment - Rep. Preston

HB 1490 - Extend Submerged Land Claims - Rep. Weatherly

SENATE FINANCE COMMITTEE

WEDNESDAY, SEPTEMBER 23, 1998

9 A.M. - ROOM 643

The Senate Finance Committee met on Wednesday, September 23, 1998, at 9 A.M. in Room 643 with Senator John Kerr presiding. There were 19 committee members present.

H.B. 20 - Increase Charity Tax Credit.

Representative McMahan was recognized to explain his Bill. On motion by Senator Ballantine, a new Committee Substitute was adopted by the Committee. Senator Dannelly moved for a Favorable Report for the new Committee Sub and the motion carried. Copy of original Bill, new Committee Sub, Explanation and Fiscal Note included in the Minutes.

H. B. 1448 - 1998 Marine Fisheries Amendment.

Representative Preston was recognized to explain her Bill. On motion by Senator Albertson a new Committee Substitute was adopted by the Committee. Senator Albertson gave a further explanation of this new Committee Sub. Jeff Hudson, Staff Attorney with the Research Division, was recognized and answered questions from the Committee members. Senator Rand sent forth an Amendment which was adopted on his motion. Senator Perdue moved for a Favorable Report, as Amended, for H.B. 1448 (PCS 6474) and a new Committee Sub will be drawn to include the Amendment. Copy of H.B. 1448 (PCS 6474), Amendment, new Committee Sub (PCS 1620), Explanation and Fiscal Note included in the Minutes.

H. B. 1490 - Extend Submerged Land Claims.

Senator Albertson was recognized to explain this Bill. After his explanation, Senator Soles moved for a Favorable Report and the motion carried. Copy of Bill, Explanations and Fiscal Note included in the Minutes.

Senator Hoyle presiding.

H.B. 1429 - Set Reg. Fees/Company Exams.

Representative Connie Wilson was recognized to explain her Bill. Senator Kerr moved for the adoption of a Committee Substitute and the motion carried. Senator Kerr explained the new Committee Sub and on motion by Senator Lee, the Committee Sub was given a Favorable Report by the Committee. Copy of H.B. 1429 (5th Ed.), copy of new Committee Sub (PCS 1619) and Explanation included in the Minutes.

H.B. 1126 - No Sales Tax on Pay Phones.

Representative Miner was recognized to explain his Bill. Senator Kerr moved for the adoption of a Committee Sub and the motion carried. Representative Minor explained the new Committee Sub and David Crotts, Fiscal Research, explained the fiscal impact. On motion by Senator Ballantine, the new Committee Sub was given a Favorable Report by the Committee. Copy of H.B. 1126 (CS), copy of new Committee Sub (PCS 3189) and copy of Explanation included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors Sign Up Sheet is Attachment # 1
Committee Report is Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 20

Short Title: Increase Nonitemizer Charity Credit. (Public)

Sponsors: Representatives McMahan; Baker, Cansler, Davis, Dockham, Gardner, Goodwin, Grady, Hall, Hardy, Miner, Moore, Morris, Preston, Rayfield, Russell, Sherrill, Shubert, Starnes, Thompson, and Wood.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.26 reads as rewritten:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 20
Proposed Senate Committee Substitute H20-PCS6476-LC

Short Title: Increase Nonitemizer Charity Credit. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE TO SEVEN PERCENT THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.26 reads as rewritten:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Part an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

Section 2. This act is effective for taxable years beginning on or after January 1, 1999.

EXPLANATION OF HOUSE BILL 20 (PCS):
Increase Nonitemizer Charity Credit

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: September 22, 1998
SPONSOR: Representative McMahan

In 1996, the General Assembly enacted a tax credit for charitable contributions made by individuals who do not itemize their deductions, effective beginning with the 1997 tax year. **House Bill 20** would increase the amount of the credit from 2.75% to 7% of eligible contributions, effective beginning with the 1999 tax year.

Under the federal Internal Revenue Code, an individual who itemizes deductions may deduct contributions to nonprofit charitable organizations. Individuals who elect the standard deduction, however, may not deduct charitable contributions. An individual's North Carolina's income tax is based on the federal calculation of taxable income, with some adjustments. The federal disallowance of charitable deductions for nonitemizers is "piggybacked" by North Carolina tax law. Legislation was introduced in Congress in 1996 to allow nonitemizers to deduct charitable contributions, but it did not pass.

Individuals who elect the standard deduction are those whose total itemized deductions (such as mortgage interest, State and local property and income taxes, medical expenses, and charitable contributions) do not exceed the standard deduction amount. The standard deduction amounts for 1997 are $6,900 for a married couple filing a joint return and $4,150 for a single individual.

In 1996, the General Assembly enacted G.S. 105-151.26, which allows a North Carolina income tax credit for 2.75% of a nonitemizer's charitable contributions to the extent the contributions exceed 2% of the taxpayer's adjusted gross income. A tax credit is a dollar-for-dollar subtraction from tax rather than a subtraction from taxable income. Thus, if a taxpayer pays tax at the 7% rate, a 7% tax credit is equal to a full deduction. North Carolina's tax rates are 6%, 7%, and 7.75%. By raising the credit from 2.75% to 7%, this bill would make the credit equivalent to the deduction currently enjoyed by most itemizers.

The House Select Committee on Nonprofits recommended the nonitemizers tax incentive proposal to the 1996 General Assembly. The Committee, which Representative McMahan chaired, recommended a 7% credit. In the course of its study, the Committee on Nonprofits heard a couple of presentations on the question of "Do tax incentives make a difference in charitable giving?" The answer is yes for federal tax incentives and probably not for state tax incentives because the state tax is so small that it does little to influence individual giving. However, the Committee strongly believed that a state incentive may affect perceptions, and thus behavior, even if the tax is too small to provide a significant economic incentive.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 20 (Proposed Senate Committee Substitute)

SHORT TITLE: Increase Non-itemizer Charity Credit

SPONSOR(S):

FISCAL IMPACT

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

($millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund		(7.6)	(7.7)	(7.8)	(7.9)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1999.

BILL SUMMARY: The act increases the income tax credit for charitable contributions by non-itemizers from 2.75% to 7%. The credit is allowed for those contributions that exceed 2% of the taxpayer's adjusted gross income.

ASSUMPTIONS AND METHODOLOGY: The non-itemizer charitable contribution tax credit of 2.75% went into effect on January 1, 1997. The estimated cost of the 2.75% credit is approximately $5 million a year. If this credit were increased to 7%, the annual cost would be approximately $13 million each year. The net fiscal impact of the 7% proposal is shown below. A 1% growth factor is assumed for this tax credit and is based on the actual growth in the number of individual income tax returns filed from 1989 to 1993. The increased credit would not affect the budget until FY 99-00, because taxpayers will not file returns for Tax Year 1999 until the spring of 2000.

	($ Millions)				
	1998-99	1999-00	2000-01	2001-02	2002-03
2.75% credit	(5.0)	(5.1)	(5.1)	(5.2)	(5.2)
7% credit (1-1-99)	--	(12.7)	(12.8)	(13.0)	(13.1)
Additional General Fund Loss		**(7.6)**	**(7.7)**	**(7.8)**	**(7.9)**

These estimates are based on charitable giving rates for non-itemizers provided by the Independent Sector, a non-profit coalition of over 800 corporate, foundation and voluntary organization members. The number of non-itemizers in North Carolina is based on estimates from the Department of Revenue's personal income tax model.

It should be noted that the above estimates are based on current giving behavior. If the credit is successful in increasing charitable giving, then the credit will produce additional losses for the General Fund. For every 5% increase in charitable giving, an additional $2 million in State revenues will be lost.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic RB
APPROVED BY:
DATE: September 22, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1448*
Committee Substitute Favorable 7/29/98
Committee Substitute #2 Favorable 8/12/98
Proposed Committee Substitute H1448-PCS6474-RT/SB015

Senate

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS 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 the Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-289.54(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Five members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection."

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.~~ G.S. 143B-289.52.

(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.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve optimal yield under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that optimal yield cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5A~~ 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

Section 3.2. G.S. 113-136(g) reads as rewritten:

"(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~ seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, ~~tax~~ receipts, permits, bills of lading, or other identification required to accompany such seafood products."

Section 3.3. G.S. 113-184(a) reads as rewritten:

"(a) It is unlawful to carry aboard any vessel subject to licensing requirements under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are

usually or can be used for taking oysters. Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement."

Section 3.4. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with ~~G.S. 113-156.1.~~ G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Section 3.5. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.23(b).~~ G.S. 143B-289.53(b). The procedures set out in ~~G.S. 143B-289.23~~ G.S. 143B-289.53 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

Section 3.6. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.23(e),~~ G.S. 143B-289.53(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.23(e).~~ G.S. 143B-289.53(c)."

Section 3.7. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

(1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or

(2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may include a fine of not more than five thousand dollars ($5,000). The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Section 3.8. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight."

Section 3.9. G.S. 113-268 reads as rewritten:

"**§ 113-268. ~~Robbing or injuring~~ Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.**

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Section 3.10. G.S. 113-277(a3) reads as rewritten:

"(a3) As used in this Article, the term 'conviction' has the same meaning assigned to it in ~~G.S. 113-166(a).~~ G.S. 113-171."

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1. G.S. 75A-5(h) reads as rewritten:

"(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars ($8.00) for a one-year period or by a fee of twenty dollars ($20.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 4.2. G.S. 75A-5.1 reads as rewritten:

"**§ 75A-5.1. Commercial fishing ~~boats;~~ vessels; renewal of number.**

(a) The owner ~~or operator~~ of any commercial fishing ~~boat which is currently licensed for the use of commercial fishing gear shall be entitled to renewal of~~ vessel that is registered under the provisions of ~~G.S. 113-152,~~ G.S. 113-168.6 may renew the certificate of number of ~~such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this section.

(b) ~~For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of ~~such boat,~~ the vessel, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the ~~boat~~ vessel for which the application for renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~ the vessel for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by ~~the preceding paragraph,~~ this section or who shall falsify any ~~tax~~ registration fee receipt ~~thereby required,~~ required by this section shall be guilty of a Class 1 misdemeanor."

Section 4.3. G.S. 105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of ~~G.S. 113-152,~~ G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, 'fish' is defined as in G.S. 113-129(7)."

Section 4.4. The title for Article 14 of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 14.

Commercial and Sports Fisheries ~~Licenses and Taxes.~~ Licenses."

Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

"(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received."

Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

"(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons.~~ License. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:~~

~~(1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.~~

~~(2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.~~"

Section 4.7. G.S. 113-154.1(i) is repealed.

Section 4.8. G.S. 113-156(i) is repealed.

Section 4.9. G.S. 113-168 reads as rewritten:

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. ~~Commercial fishing operation includes taking people fishing for hire.~~ Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used or (ii) the taking of fish under a RCGL.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) 'Immediate family' means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.~~

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License."

Section 4.10. G.S. 113-168.1 reads as rewritten:

"**§ 113-168.1. General provisions ~~for commercial~~ governing licenses and endorsements.**

(a) Duration, Fees. -- Except as provided in G.S. 113-173(f), ~~All~~ all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual ~~license~~ fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without ~~being licensed as~~ holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of ~~a~~ the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It is unlawful for a person to refuse to exhibit ~~the licenses and~~

~~endorsements~~ any license, assignment, or endorsement required by this Article upon the request of an inspector or ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. -- Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. -- A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years.

(h) Replacement Licenses and Endorsements. -- The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed ten dollars ($10.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(i) Cancellation. -- The Division may cancel a license or endorsement issued on the basis of an application that contains false information supplied by the applicant,

A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division."

Section 4.11. G.S. 113-168.2 reads as rewritten:

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- ~~No person shall~~ Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL ~~or RSCFL~~ is not required to hold a ~~SCFL or RSCFL.~~ SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

(a1) Use of Vessels. -- The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, beach seine operation, or menhaden operation.

~~(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

~~(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.~~

~~(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.~~

(e) Fees. -- The annual SCFL fee for a ~~North Carolina~~ resident of this State shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars ($200.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any ~~individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's ~~name and~~ name, mailing address, physical or residence address, and the duration of the assignment. ~~A notarized copy of the assignment shall be filed with the Division.~~ If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. ~~The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel.~~ It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment ~~may be revoked by: (i)~~ shall terminate:

(1) Upon written notification by the assignor to the assignee and the Division that the assignment has been ~~terminated; or (ii) a~~ terminated.

(1a) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.

(2) ~~determination by the Division~~ If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(3) If the assignee becomes ineligible to hold a license under this Article.

(4) Upon the death of the assignee.

(5) If the Division suspends or revokes the assigned SCFL.

(6) At the end of the license year.

(g) Transfer. -- A SCFL may be ~~transferred:~~

~~(1) By the license holder to a member of the license holder's immediate family.~~

~~(2) By the State to the estate of the license holder upon the death of the license holder.~~

~~(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.~~

~~(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.~~

~~(5) Under any other circumstance authorized by rule of the Commission.~~

transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

(1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.

(2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:

a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.

b. Assign the SCFL as provided in subsection (f) of this section.

c. Renew the SCFL as provided in G.S. 113-168.1.

(3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.

(4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.

(5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid ~~SCFL, RSCFL,~~ SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the ~~SCFL, RSCFL,~~ SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction."

Section 4.12. G.S. 113-168.3 reads as rewritten:

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any ~~person~~ individual who is 65 years of age or older and who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a ~~North Carolina~~ resident of this State shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars ($100.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel.~~

(1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, ~~that purchaser~~ the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee ~~for the SCFL~~ set ~~forth~~ out in G.S. 113-168.2.

(2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.

(d) Assignment. -- The RSCFL shall not be assignable."

Section 4.13. G.S. 113-168.4 reads as rewritten:

"**§ 113-168.4. ~~Regulations concerning the sale~~ Sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value ~~for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2.~~ without holding a license required to sell the type of fish being offered. ~~It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.~~

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a ~~nonprofit~~ recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). It is unlawful for any person licensed under this subsection to sell fish to any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only for ~~charitable purposes.~~ charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses."

Section 4.14. G.S. 113-168.5 reads as rewritten:

"**§ 113-168.5. License endorsements for Standard Commercial Fishing ~~License and Retired Standard Commercial Fishing~~ License.**

~~(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.~~

~~(b) Vessel Endorsements. –~~

~~(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:~~

~~a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;~~

~~b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or~~

~~e. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.~~

~~(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.~~

~~(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:~~

~~a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.~~

~~b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.~~

~~c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.~~

~~d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.~~

~~(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).~~

~~(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a~~

~~notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.~~

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in ~~the~~ coastal fishing ~~waters of the State,~~ waters, to land menhaden taken by purse seine, ~~in the State,~~ or to sell menhaden ~~from a vessel in the State~~ taken by purse seine without obtaining a menhaden endorsement of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL ~~or RSCFL~~ to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-168.6. Commercial fishing vessel registration.**

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

(1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

(2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

(3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:

(1) One dollar ($1.00) per foot for a vessel not over 18 feet in length.

(2) One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.
(3) Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.
(4) Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and apply for a replacement commercial fishing vessel registration. An application for a replacement commercial fishing vessel registration shall be accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h) apply to a replacement commercial fishing vessel registration."

Section 4.16. G.S. 113-169 reads as rewritten:

"**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation for the harvest and sale of menhaden under the direction of a person who holds a valid menhaden license for nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

Section 4.17. G.S. 113-169.2 reads as rewritten:

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (j) of this section by any means without holding either a shellfish license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The shellfish license authorizes the licensee to sell ~~shellfish to a licensed fish dealer.~~ shellfish.

~~(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's~~

~~Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.~~

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a ~~resident of North Carolina.~~ North Carolina resident.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

~~(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.~~

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:
   a. One bushel of oysters per day.
   b. One-half bushel of scallops per day.
   c. One hundred clams per day.
   d. Ten conchs per day.
   e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.
b. One bushel of scallops per day.
c. Two hundred clams per day.
d. Twenty conchs per day.
e. Two hundred mussels per day."

Section 4.18. G.S. 113-169.3 reads as rewritten:

"**§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this ~~article.~~ Article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
(2) To sell fish to the public; or
(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

~~Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.~~

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

(f1) Other License Categories. -- Any person subject to fish dealer licensing requirements who deals in fish not included in the ~~above~~ categories listed in subsection (f) of this section shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this ~~subsection.~~ section. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

~~(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.~~

(h) ~~Application for~~ Replacement License. -- ~~A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.~~ If the licensee fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.

(i) Unlawful Purchase and Sale of Fish. -- It is unlawful for a fish dealer to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter. It is unlawful for a fish dealer to buy or accept fish ~~unless the~~ unless, at the time of the transaction:

(1) The seller or donor ~~possesses~~ presents a current and valid ~~SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c),~~ license to sell the type of fish being offered;

(2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and ~~the~~

(3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.~~

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section."

Section 4.19. G.S. 113-169.4(b) reads as rewritten:

"(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license ~~from the Division. The replacement license is issued without charge.~~ as provided in G.S. 113-168.1(h)."

Section 4.20. G.S. 113-170.1 reads as rewritten:

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow

nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions."

Section 4.21. G.S. 113-173 reads as rewritten:

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational ~~quotas or~~ possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- ~~Upon receipt of a proper application and a two dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.~~ The provisions of G.S 113-168.1(h) apply to this section.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow,

assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL."

Section 4.22. G.S. 113-223 reads as rewritten:

"**§ 113-223. Reciprocal agreements by Department generally.**

Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~ G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 19A.

"~~South Atlantic~~ Fishery Management ~~Council.~~ Councils.

"**§ 113-259. North Carolina members of the South Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the ~~Magnuson~~ Magnuson-Stevens Fishery Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~et seq.,~~ , et

seq., there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission.

"**§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of the Mid-Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

"Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection

(a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that ~~are renewed.~~ were issued and renewed during the previous license year. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on ~~1 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire ~~1 July~~ 30 June 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which

the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The ~~Division~~ SCFL Eligibility Board shall review each application for a SCFL that ~~it~~ the Division receives during the application period to determine whether the applicant is eligible for a SCFL under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

(i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board shall apply the eligibility criteria adopted by the Commission to determine whether an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of the Secretary of Environment and Natural Resources or the Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes."

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1. G.S. 77-20 reads as rewritten:

"**§ 77-20. Seaward boundary of coastal lands.**

(a) The seaward boundary of all property within the State of North Carolina, not owned by the State, which adjoins the ocean, is the mean high water mark. Provided, that this section shall not apply where title below the mean high water mark is or has been specifically granted by the State.

(b) Notwithstanding any other provision of law, no agency shall issue any rule or regulation which adopts as the seaward boundary of privately owned property any line other than the mean high water mark. The mean high water mark also shall be used as the seaward boundary for determining the area of any property when such determination is necessary to the application of any rule or regulation issued by any agency.

(c) For purposes of this Article, 'agency' means any part, branch, division, or instrumentality of the State; any county, municipality, or special district; or any commission, committee, council, or board established by the State, or by any county or municipality.

(d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the common heritage of the public to the customary free use and enjoyment of the ocean beaches seaward of the vegetation line, which rights remain reserved to the people of this State as provided in Article XIV, Section 5 of the Constitution of North Carolina and consistent with public trust rights in the ocean beaches.

(e) As used in this section, 'vegetation line' means the first line of stable, natural vegetation bordering the ocean beach landward of the mean high water mark."

Section 5.2. The Joint Legislative Commission on Seafood and Aquaculture, with the advice and assistance of the Advisory Committee created pursuant to Section 6.11 of S.L. 1997-400, shall study the biological, habitat, and socioeconomic impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. The Commission and the Advisory Committee shall conduct this study in conjunction with any similar or related studies funded by the Fishery Resource Grant Program. The Commission shall report its findings and recommendations, if any, to the 1999 General Assembly.

Section 5.3. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 5.4. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.6. Sections 1.3, 1.5, 1.8, 2.1, 3.2, 3.8, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, 5.4, 5.5, and 5.6 of this act are effective when this act becomes law. Sections 3.7 and 3.9 of this act become effective December 1, 1998, and apply to offenses committed on or after that date. Sections 1.4, 3.3, 3.4, 3.10, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 3.5, 3.6, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS - ~~1616~~ 6474

H. B. No. _____

S. B. No. 1448

COMMITTEE SUBSTITUTE _____

DATE 23 September 1998

Amendment No. 1

(to be filled in by Principal Clerk)

~~Rep.~~)
Sen.) Rand

moves to amend the bill on page 12, line 30

( ) WHICH CHANGES THE TITLE "

by inserting: "The Division may also consider violations of federal law and regulations in determining whether an applicant is eligible for a license."

PW

SIGNED Tony Rand

ADOPTED 23 Sept 1998 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1448*
Committee Substitute Favorable 7/29/98
Committee Substitute #2 Favorable 8/12/98
Proposed Senate Committee Substitute H1448-PCS1620-RT/SB016

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS 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 the Chair, appointed pursuant to subdivision (4), (5), or (6) of G.S. 143B-289.54(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Five members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection."

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.~~ G.S. 143B-289.52.

(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.

(c1) The Department shall consult with the regional advisory committees established pursuant to G.S. 143B-289.57(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans established by G.S. 143B-289.52. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve optimal yield under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that optimal yield cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5A~~ 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

Section 3.2. G.S. 113-136(g) reads as rewritten:

"(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~ seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, ~~tax~~ receipts, permits, bills of lading, or other identification required to accompany such seafood products."

Section 3.3. G.S. 113-184(a) reads as rewritten:

"(a) It is unlawful to carry aboard any vessel subject to licensing requirements under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are

usually or can be used for taking oysters. Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement."

Section 3.4. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with ~~G.S. 113-156.1.~~ G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Section 3.5. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.23(b).~~ G.S. 143B-289.53(b). The procedures set out in ~~G.S. 143B-289.23~~ G.S. 143B-289.53 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

Section 3.6. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.23(c),~~ G.S. 143B-289.53(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.23(c).~~ G.S. 143B-289.53(c)."

Section 3.7. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

(1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or

(2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may include a fine of not more than five thousand dollars ($5,000). The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Section 3.8. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight."

Section 3.9. G.S. 113-268 reads as rewritten:

"**§ 113-268. ~~Robbing or injuring~~ Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.**

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Section 3.10. G.S. 113-277(a3) reads as rewritten:

"(a3) As used in this Article, the term 'conviction' has the same meaning assigned to it in ~~G.S. 113-166(a).~~ G.S. 113-171."

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1. G.S. 75A-5(h) reads as rewritten:

"(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars ($8.00) for a one-year period or by a fee of twenty dollars ($20.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 4.2. G.S. 75A-5.1 reads as rewritten:

"**§ 75A-5.1. Commercial fishing ~~boats;~~ vessels; renewal of number.**

(a) The owner ~~or operator~~ of any commercial fishing ~~boat which is currently licensed for the use of commercial fishing gear shall be entitled to renewal of~~ vessel that is registered under the provisions of ~~G.S. 113-152,~~ G.S. 113-168.6 may renew the certificate of number of ~~such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this section.

(b) ~~For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of ~~such boat,~~ the vessel, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the ~~boat~~ vessel for which the application for renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~ the vessel for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by ~~the preceding paragraph,~~ this section or who shall falsify any ~~tax~~ registration fee receipt ~~thereby required,~~ required by this section shall be guilty of a Class 1 misdemeanor."

Section 4.3. G.S. 105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of ~~G.S. 113-152,~~ G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, 'fish' is defined as in G.S. 113-129(7)."

Section 4.4. The title for Article 14 of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 14.

Commercial and Sports Fisheries ~~Licenses and Taxes.~~ Licenses."

Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

"(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received."

Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

"(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons.~~ License. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:~~

~~(1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.~~

~~(2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.~~"

Section 4.7. G.S. 113-154.1(i) is repealed.

Section 4.8. G.S. 113-156(i) is repealed.

Section 4.9. G.S. 113-168 reads as rewritten:

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. ~~Commercial fishing operation includes taking people fishing for hire.~~ Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used or (ii) the taking of fish under a RCGL.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) 'Immediate family' means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.~~

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License."

Section 4.10. G.S. 113-168.1 reads as rewritten:

"**§ 113-168.1. General provisions ~~for commercial~~ governing licenses and endorsements.**

(a) Duration, Fees. -- Except as provided in G.S. 113-173(f), ~~All~~ all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual ~~license~~ fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without ~~being licensed as~~ holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of ~~a~~ the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It is unlawful for a person to refuse to exhibit ~~the licenses and~~

~~endorsements~~ any license, assignment, or endorsement required by this Article upon the request of an inspector or ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. -- Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. -- A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years. The Division may also consider violations of federal law and regulations in determining whether an applicant is eligible for a license.

(h) Replacement Licenses and Endorsements. -- The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed ten dollars ($10.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(i) Cancellation. -- The Division may cancel a license or endorsement issued on the basis of an application that contains false information supplied by the applicant. A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division."

Section 4.11. G.S. 113-168.2 reads as rewritten:

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- ~~No person shall~~ Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL ~~or RSCFL~~ is not required to hold a ~~SCFL or RSCFL.~~ SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

(a1) Use of Vessels. -- The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, beach seine operation, or menhaden operation.

~~(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

~~(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.~~

~~(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license~~

~~fees shall not be refunded and shall be applied to the costs of processing the application.~~

(e) Fees. -- The annual SCFL fee for a ~~North Carolina~~ resident of this State shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars ($200.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any ~~individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's ~~name and~~ name, mailing address, physical or residence address, and the duration of the assignment. ~~A notarized copy of the assignment shall be filed with the Division.~~ If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. ~~The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel.~~ It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment ~~may be revoked by: (i)~~ shall terminate:

(1) Upon written notification by the assignor to the assignee and the Division that the assignment has been ~~terminated; or (ii) a~~ terminated.

(1a) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.

(2) ~~determination by the Division~~ If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(3) If the assignee becomes ineligible to hold a license under this Article.

(4) Upon the death of the assignee.

(5) If the Division suspends or revokes the assigned SCFL.

(6) At the end of the license year.

(g) Transfer. -- A SCFL may be ~~transferred.~~

~~(1) By the license holder to a member of the license holder's immediate family.~~
~~(2) By the State to the estate of the license holder upon the death of the license holder.~~
~~(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.~~
~~(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.~~
~~(5) Under any other circumstance authorized by rule of the Commission.~~

transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

(1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.
(2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:
    a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.
    b. Assign the SCFL as provided in subsection (f) of this section.
    c. Renew the SCFL as provided in G.S. 113-168.1.
(3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.
(4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.
(5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid ~~SCFL, RSCFL,~~ SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the ~~SCFL, RSCFL,~~ SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction."

Section 4.12. G.S. 113-168.3 reads as rewritten:

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any ~~person~~ individual who is 65 years of age or older and who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a ~~North Carolina~~ resident of this State shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars ($100.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel.~~

(1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, ~~that purchaser~~ the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee ~~for the SCFL~~ set ~~forth~~ out in G.S. 113-168.2.

(2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.

(d) Assignment. -- The RSCFL shall not be assignable."

Section 4.13. G.S. 113-168.4 reads as rewritten:

"**§ 113-168.4. ~~Regulations concerning the sale~~ Sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value ~~for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2.~~ without holding a license required to sell the type of fish being offered. ~~It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.~~

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a ~~nonprofit~~ recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). It is unlawful for any person licensed under this subsection to sell fish to any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only for ~~charitable purposes.~~ charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses."

Section 4.14. G.S. 113-168.5 reads as rewritten:

"**§ 113-168.5. License endorsements for Standard Commercial Fishing ~~License and Retired Standard Commercial Fishing~~ License.**

~~(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.~~

~~(b) Vessel Endorsements. --~~

~~(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:~~

~~a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;~~

~~b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or~~

~~c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.~~

~~(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.~~

~~(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:~~

~~a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.~~

~~b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.~~

~~c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.~~

~~d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.~~

~~(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).~~

~~(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be~~

~~accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.~~

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in ~~the~~ coastal fishing ~~waters of the State,~~ waters, to land menhaden taken by purse seine, ~~in the State,~~ or to sell menhaden ~~from a vessel in the State~~ taken by purse seine without obtaining a menhaden endorsement of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL ~~or RSCFL~~ to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-168.6. Commercial fishing vessel registration.**

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

(1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

(2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

(3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the

distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:

(1) One dollar ($1.00) per foot for a vessel not over 18 feet in length.

(2) One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

(3) Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

(4) Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and apply for a replacement commercial fishing vessel registration. An application for a replacement commercial fishing vessel registration shall be accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h) apply to a replacement commercial fishing vessel registration."

Section 4.16. G.S. 113-169 reads as rewritten:

"**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation for the harvest and sale of menhaden under the direction of a person who holds a valid menhaden license for nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

Section 4.17. G.S. 113-169.2 reads as rewritten:

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section by any means without holding either a shellfish license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The shellfish license authorizes the licensee to sell ~~shellfish to a licensed fish dealer.~~ shellfish.

~~(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.~~

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a ~~resident of North Carolina.~~ North Carolina resident.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

~~(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.~~

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

d. Ten conchs per day.

e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.
b. One bushel of scallops per day.
c. Two hundred clams per day.
d. Twenty conchs per day.
e. Two hundred mussels per day."

Section 4.18. G.S. 113-169.3 reads as rewritten:

"**§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this ~~article.~~ Article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
(2) To sell fish to the public; or
(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

~~Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate~~

~~license for each physical location conducting activities required to be licensed under this section.~~

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

(f1) Other License Categories. -- Any person subject to fish dealer licensing requirements who deals in fish not included in the ~~above~~ categories listed in subsection (f) of this section shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this ~~subsection.~~ section. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

~~(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location,~~

~~expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.~~

(h) ~~Application for~~ Replacement License. -- ~~A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.~~ If the licensee fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.

(i) Unlawful Purchase and Sale of Fish. -- It is unlawful for a fish dealer to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter. It is unlawful for a fish dealer to buy or accept fish ~~unless the~~ unless, at the time of the transaction:

(1) The seller or donor ~~possesses~~ presents a current and valid ~~SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(e),~~ license to sell the type of fish being offered;

(2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and ~~the~~

(3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.~~

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section."

Section 4.19. G.S. 113-169.4(b) reads as rewritten:

"(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license ~~from the Division. The replacement license is issued without charge.~~ as provided in G.S. 113-168.1(h)."

Section 4.20. G.S. 113-170.1 reads as rewritten:

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents

can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions."

Section 4.21. G.S. 113-173 reads as rewritten:

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational ~~quotas or~~ possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- ~~Upon receipt of a proper application and a two dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.~~ The provisions of G.S 113-168.1(h) apply to this section.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL."

Section 4.22. G.S. 113-223 reads as rewritten:

"**§ 113-223. Reciprocal agreements by Department generally.**

Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~ G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 19A.

"~~South Atlantic~~ Fishery Management ~~Council.~~ Councils.

"**§ 113-259. North Carolina members of the South Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the ~~Magnuson~~ Magnuson-Stevens Fishery Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~et seq.,~~ , et seq., there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission.

"§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management Council.

(a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of the Mid-Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

"Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3

of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that ~~are renewed.~~ were issued and renewed during the previous license year. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on ~~1 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire ~~1 July~~ 30 June 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of

available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The ~~Division~~ SCFL Eligibility Board shall review each application for a SCFL that ~~it~~ the Division receives during the application period to determine whether the applicant is eligible for a SCFL under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

(i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board shall apply the eligibility criteria adopted by the Commission to determine whether an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of the Secretary of Environment and Natural Resources or the Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes."

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1. G.S. 77-20 reads as rewritten:

"**§ 77-20. Seaward boundary of coastal lands.**

(a) The seaward boundary of all property within the State of North Carolina, not owned by the State, which adjoins the ocean, is the mean high water mark. Provided, that this section shall not apply where title below the mean high water mark is or has been specifically granted by the State.

(b) Notwithstanding any other provision of law, no agency shall issue any rule or regulation which adopts as the seaward boundary of privately owned property any line other than the mean high water mark. The mean high water mark also shall be used as the seaward boundary for determining the area of any property when such determination is necessary to the application of any rule or regulation issued by any agency.

(c) For purposes of this Article, 'agency' means any part, branch, division, or instrumentality of the State; any county, municipality, or special district; or any

commission, committee, council, or board established by the State, or by any county or municipality.

(d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the common heritage of the public to the customary free use and enjoyment of the ocean beaches seaward of the vegetation line, which rights remain reserved to the people of this State as provided in Article XIV, Section 5 of the Constitution of North Carolina and consistent with public trust rights in the ocean beaches.

(e) As used in this section, 'vegetation line' means the first line of stable, natural vegetation bordering the ocean beach landward of the mean high water mark."

Section 5.2. The Joint Legislative Commission on Seafood and Aquaculture, with the advice and assistance of the Advisory Committee created pursuant to Section 6.11 of S.L. 1997-400, shall study the biological, habitat, and socioeconomic impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. The Commission and the Advisory Committee shall conduct this study in conjunction with any similar or related studies funded by the Fishery Resource Grant Program. The Commission shall report its findings and recommendations, if any, to the 1999 General Assembly.

Section 5.3. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 5.4. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.6. Sections 1.3, 1.5, 1.8, 2.1, 3.2, 3.8, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, 5.4, 5.5, and 5.6 of this act are effective when this act becomes law. Sections 3.7 and 3.9 of this act become effective December 1, 1998, and apply to offenses committed on or after that date. Sections 1.4, 3.3, 3.4, 3.10, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 3.5, 3.6, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

MEMORANDUM

September 23, 1998

To: Senate Committee on Finance

From: Jeff Hudson, Committee Counsel for Senate Committee on Agriculture, Environment, and Natural Resources

Regarding: Proposed Senate Committee Substitute 015 for House Bill 1448 (1998 Marine Fisheries Amendments)

Proposed Senate Committee Substitute 015 for House Bill 1448 (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. 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, 5 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.*

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 also 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 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 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 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 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.*

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. 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 5.3 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 5.4 explains the use of headings in the bill. *Effective when this act becomes law.*

Section 5.5 provides for the severability of the provisions of the bill. *Effective when this act becomes law.*

Section 5.6 establishes the effective dates of the sections of the bill. *Effective when this act becomes law.*

FISCAL ANALYSIS MEMORANDUM

DATE: September 23, 1998

TO: Senate Committee on Finance

FROM: Mona Moon
Fiscal Research Division

RE: House Bill 1448 (Proposed Committee Substitute H1448-PCS6474-RT/SB015)
1998 Marine Fisheries Amendments

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	Up to $2,425 annually beginning with FY 1999-00				
EXPENDITURES	No Significant Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Marine Fisheries, Marine Fisheries Commission

EFFECTIVE DATE: Various

BILL SUMMARY:
Makes various substantive, technical and clarifying changes to marine fisheries law. *Part I Marine Fisheries Commission*: 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. 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. Increases the quorum for the Commission from 5 to 6 and prohibits the Commission from transacting business unless a "commercial" member, other than the Chair, and a "recreational" member, other than the Chair, are present. *Part II Fishery Management Plans*: 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. 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. *Part III Marine Fisheries Law Enforcement:* 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. 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. *Part IV Fishing Licenses; Transitional Provisions:* 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". Deletes the prohibition against selling fish using another person's endorsement to sell. Deletes 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. 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). Also defines "immediate family" for purposes of transferring a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License (RSCFL). 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. Amends and expands the general licensing provisions and the SCFL statutes. Authorizes the Commission to establish replacement license fees of up to $10.00. Clarifies that all licensing provisions applicable to the SCFL are also applicable to the RSCFL, except that a RSCFL may not be assigned. Clarifies that a person must have the specific license to sell the type of fish the person is offering for sale. Clarifies that the sale of fish by a recreational fishing tournament. Deletes the vessel endorsement provision. Requires vessels engaged in commercial fishing operations, except for non-motorized auxiliary vessels, to be registered by the Division. Clarifies the eligibility requirements for obtaining a menhaden license for nonresidents not eligible for a SCFL. Provides that a shellfish license is required for taking shellfish from privately held grounds. Provides that fish dealer licenses will be available at all offices of the Division. Limits the provision governing the unlawful purchase, possession, and sale of fish to fish dealers. Provides that it is unlawful for a person fishing under a RCGL to possess fish in excess of recreational possession limits. Provides for North Carolina membership in the Mid-Atlantic Fishery Management Council. Makes clarifications to the number of SCFLs available in each license year, beginning with the 2000-2001 license year, and 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. *Part V Miscellaneous Provisions*: 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. Defines "vegetation line" as the first line of stable, natural vegetation bordering the ocean beach landward of the mean high water mark. Also 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. [1]

[1] Memorandum dated September 22, 1998 to Senate Committee on Finance from Jeff Hudson, Committee Counsel

ASSUMPTIONS AND METHODOLOGY:

REVENUES:

The bill authorizes the Marine Fisheries Commission to establish a replacement fee for lost, stolen or destroyed licenses, including endorsements. The fee charged may not exceed $10.00 and shall be set by the commission to compensate the division for associated administrative costs.

Currently, the Division of Marine Fisheries charges $5.00 to replace vessel licenses and related endorsements to sell that are either destroyed or unreadable. In addition, the division routinely provides copies of its license receipts to replace lost licenses until a new one can be issued for the next license year. Such "certified copies" are currently provided free of charge.

The division issued a total of 30,964 commercial fishing licenses and vessel endorsements during the 1997-98 fiscal year. Of these, 115 were either destroyed or unreadable and replaced for a $5.00 fee or total replacement fee revenue of $575.00. Certified copies were issued for another 192 licenses that were reported lost during the fiscal year.

The division is unsure how many of each type of license will be issued under the new license system effective July 1, 1999, but does not anticipate a dramatic increase in the total number of licenses issued. Unless the division must issue a substantial number of licenses as a result of the requirement that a replacement be issued within 30 days of a change in the licensee's name or address, the division is not likely to experience a significant change in the number of replacement licenses issued.

The proposal to allow the Marine Fisheries Commission to establish the fee ties the amount of the fee to the costs associated with administering replacement license requests. The division is considering issuing photo identification cards under the new licensing system to reduce fraud. The picture ID licenses are expected to cost more to replace than current licenses. Assuming the division continues to replace approximately 300 licenses each year, and the commission sets the replacement fee at $10.00, the maximum allowed, the division would receive an additional $2,425.00 per year in license revenues (relative to current replacement fee receipts of $575.00).

EXPENDITURES:

Effective July 1, 1999, the 1997 Fisheries Reform Act (Chapter 400, 1997 Session Laws) establishes a new Standard Commercial Fishing License (SCFL) which will be available only to persons holding a valid endorsement to sell fish on July 1, 1999 (the bill proposes to change this date to June 30, 1999). In addition, up to 500 additional SCFLs may be available for distribution by lot to new entrants or persons not otherwise eligible for a SCFL.

According to the Division of Marine Fisheries the bill is not expected to have a significant fiscal impact unless a clerical position is needed to support the SCFL Eligibility Board established in Section 4.24. The board is to consist of three members and is responsible for determining the eligibility of an applicant for a commercial fishing license relative to the eligibility criteria adopted by the Marine Fisheries Commission.

The Division of Marine Fisheries currently provides administrative support to the Appeals Panel established in 1994 to review petitions for the issuance of fishing licenses under the license moratorium in effect since July 1, 1994. The division is currently seeking a Processing Assistant III position at an annual cost of $29,738 for the Appeals Panel through the Governor's 1998 Recommended Expansion Budget and expects this position to support the SCFL Eligibility Board beginning with the 1999-2000 fiscal year. In 1994 the General Assembly appropriated $10,000 to cover the panel's expenses. Although, the division has paid operating expenses in excess of the appropriation with existing resources since the panel was established, it is uncertain whether the Eligibility Board established in this bill will experience a comparable workload and carry out its responsibilities in a manner similar to the Appeals Panel, thereby requiring permanent staff support and additional operating support.

Demand for the SCFL is somewhat unknown. Petitions for licenses heard by the Appeals Panel have declined since the first year of the moratorium. The panel reviewed 369 petitions in FY 94-95, 377 in FY 95-96, 301 in FY 96-97 and 178 through October of the 1997-98 fiscal year. In addition, petitions heard by the Appeals Panel include persons seeking a commercial license for the sole purpose of using commercial gear, not to derive income from the sale of fish. Those persons will be able to purchase a new Recreational Commercial Gear License (RCGL) and likely will not apply for a SCFL. If demand is low, the Eligibility Board will not have many applications to review.

The Appeals Panel currently holds two meetings each month to hear petitions for commercial fishing licenses, but the Eligibility Board does not necessarily have to use a "hearing" format to determine eligibility for the lot. Depending on the eligibility criteria established by the commission, the Eligibility Board may be able to expedite consideration of applicants relative to the process used by the Appeals Panel.

Until there is a better indication of the actual level of demand for SCFLs through the new license pool process and the operating needs of the Eligibility Board are more clearly defined based on the eligibility criteria as adopted by the Marine Fisheries Commission, it is anticipated that the division can continue to provide staff support from existing resources.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1490*

Short Title: Extend Submerged Lands Claims. (Public)

Sponsors: Representative Weatherly.

Referred to: Environment.

May 25, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATION OF HOUSE BILL 1490:
Extend Submerged lands Claims

TO: Senate Finance Committee
FROM: Martha Walston and Jeff Hudson, Staff Attorneys
DATE: September 22, 1998
SPONSOR: Representative Weatherly

House Bill 1490 is a recommendation of the Environmental Review Commission. House Bill 1490 was also reviewed by the Joint Legislative Commission on Seafood and Aquaculture. The bill was received from the House on September 7, 1998. The companion to House Bill 1490, Senate bill 1274, was introduced in the Senate by Senator Albertson and passed third reading in the Senate on June 4, 1998. On September 16, 1998, the House Environment Committee gave a favorable report to a committee substitute to Senate Bill 1274. This committee substitute, which has been referred to House Finance, does not change the submerged lands portion of the bill but tacks on amendments to the law regarding the control of childhood lead exposure.

House Bill 1490 was requested by the Department of Environment and Natural Resources (DENR) in order to provide more time for DENR, in conjunction with the Attorney General's Office, to resolve outstanding submerged land claims. A submerged land claim is one whereby a person alleges that he has been deprived of his private property rights in lands under navigable waters or his right of fishery in navigable waters without just compensation If the claimant prevails, DENR may condemn the property and pay the claimant the worth of his claim. The courts have applied the public trust doctrine in these instances. This doctrine favors public ownership of submerged lands.

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

Section 2 extends the date by which marshland claimed under the submerged lands claims statutes must be offered for donation in order to qualify for a tax credit under G.S. 105-151.12, from December 31, 1998 to December 31, 2003. This is a tax credit in the amount of 25% of the donated property interest and may not exceed $100,000. Any unused portion of the credit may be carried forward five years.

Section 3 makes this act effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

Memorandum

September 23, 1998

TO: Senate Committee on Finance

FROM: Jeff Hudson, Committee Counsel; Senate Committee on Agriculture, Environment, and Natural Resources

SUBJECT: House Bill 1490 (Extend Submerged Lands Claims)

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

House Bill 1490 was requested by the Department of Environment and Natural Resources (DENR) in order to provide more time for DENR, in conjunction with the Attorney General's Office, to resolve outstanding submerged lands claims.

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

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

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1490

SHORT TITLE: Extend Submerged Lands Claims

SPONSOR(S): Representative Weatherly

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	**0**	**($100,000)**	**($100,000)**	**($100,000)**	**($100,000)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Marine Fisheries, Department of Environment and Natural Resources.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill extends three deadlines related to submerged land claims. First, the bill extends until December 31, 2006, the time allowed to file a submerged land claim. Under current law that period closes on December 31, 2001. As such, the bill gives the potential plaintiff five more years to take action. Second, the bill gives the Department of Environment and Natural Resources until December 31, 2003, to establish a plan to resolve submerged land claims. Under current law, the Department's time expires on December 31, 1998. Third, the bill extends the date by which claimed marshlands must be donated to qualify for a tax credit under G.S. 105-151,12 from December 31, 1998, to December 31, 2003.

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

eligible for a tax credit, if the land is donated. The bill extends this portion of G.S. 105-151.12(e) to December 31, 2003.

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

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

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

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:
DATE: August 17, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 1429*
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/9/98
Committee Substitute #3 Favorable 9/3/98
Fifth Edition Engrossed 9/17/98

Short Title: Set Reg. Fees/Company Exams. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES, TO AMEND THE LAW GOVERNING INSURERS' INVESTMENTS IN MORTGAGE LOANS AND MORTGAGE SECURITIES, AND TO CONFORM THE INSURANCE SURCHARGE LAW TO A RECENT ENACTMENT.

The General Assembly of North Carolina enacts:

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

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

Section 3. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. <u>The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State.</u>"

Section 4. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 5. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) 'Commissioner' includes an authorized representative or designee of the Commissioner.

(2) 'Examination' means an examination conducted under the Examination Law.

(3) 'Examiner' means any person authorized by the Commissioner to conduct an examination.

(4) 'Insurance regulator' means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) 'Person' includes a trust or any affiliate of a person."

Section 6. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 7. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.
(2) Reserves to be maintained by insurers issuing funding agreements.
(3) Accounting and reporting of funds credited under funding agreements.
(4) Disclosure of information to be given to holders and prospective holders of funding agreements.
(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 8. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 9. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

Section 10. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a3) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

Section 11. G.S. 58-7-170(c) reads as rewritten:

"(c) ~~The cost of investments made by insurers in mortgage loans, authorized by G.S. 58-7-179, with any one person shall not exceed the lesser of five percent (5%) of the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the Commissioner's consent if the admitted value of all mortgage loans held by the insurer exceeds an~~

~~aggregate of sixty percent (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the admitted assets of the insurer.~~

~~An insurer that, as of October 1, 1993, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1994, a plan to bring the amount of mortgage investments into compliance with the limitations by January 1, 2001.~~

The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in mortgage pass-through securities and derivatives of mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral package, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or mortgage pass-through securities and derivatives of mortgage pass-through securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all mortgage pass-through securities and derivatives of mortgage pass-through securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. Mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral package limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring the amount of mortgage investments into compliance with the specified limitations by January 1, 2004."

Section 12. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) ~~additional~~ Additional taxes imposed by G.S. ~~105-228.8,~~ 105-228.8.

(2) The ~~the~~ additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4), and any~~ 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. ~~97-133(a) shall be disregarded.~~ 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

Section 13. Section 1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1429*
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/9/98
Committee Substitute #3 Favorable 9/3/98
Proposed Senate Committee Substitute H1429-PCS1619-RB

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

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO INCREASE VARIOUS FEES, TO ESTABLISH A FEE FOR FAIRNESS HEARING CONDUCTED BY THE OFFICE OF THE SECRETARY OF STATE, TO INCREASE THE AUTOPSY FEE, TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES, TO AMEND THE LAW GOVERNING INSURERS' INVESTMENTS IN MORTGAGE LOANS AND MORTGAGE SECURITIES, AND TO CONFORM THE INSURANCE SURCHARGE LAW TO A RECENT ENACTMENT.

The General Assembly of North Carolina enacts:

PART I. PUBLIC UTILITY REGULATORY FEE

Section 1.1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

PART II. INSURANCE REGULATORY FEE

Section 2.1. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

Section 2.2. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) ~~additional~~ Additional taxes imposed by G.S. ~~105-228.8,~~ 105-228.8.

(2) The ~~the~~ additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4), and any~~ 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. ~~97-133(a) shall be disregarded.~~ 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

PART III. SECRETARY OF STATE FEES

Section 3.1. G.S. 10A-7 reads as rewritten:

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

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

Section 3.2. G.S. 78A-28 reads as rewritten:

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

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

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

by filing any documents or reports that the Administrator may by rule or order require.

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

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

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

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

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

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

in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

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

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

Section 3.3. G.S. 78A-30 is amended by adding a new subsection to read:

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

Section 3.4. G.S. 78A-31(a) reads as rewritten:

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

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

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

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

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

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

Section 3.5. G.S. 147-37 reads as rewritten:

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

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

PART IV. INCREASE AUTOPSY FEE

Section 4.1. G.S. 130A-389(a) reads as rewritten:

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

PART V. WATER QUALITY FEES

Section 5.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

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

(a) Annual Fees for Discharge and Nondischarge Permits Under G.S. 143-215.1. --

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

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

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

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

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

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

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

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

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

(c) Application and Annual Fees for Consent Special Orders. --

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

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

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

(e) Other Fees Under This Article. --

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

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

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

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

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

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

Section 5.2. G.S. 143-215.3(a) reads as rewritten:

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

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

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

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

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

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

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

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection for

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

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

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

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

be adopted according to the procedures set out in Chapter 150B of the General Statutes.

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

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

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

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

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to

any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

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

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

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

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

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

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

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

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only

upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

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

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

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

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

person resides or has his or its principal place of business, to recover such sums.

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

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

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

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

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

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

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

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

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

Section 5.3. G.S. 143-215.3A reads as rewritten:

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

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

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

(2) Fees credited to the Title V Account.

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

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

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

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

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

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

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

Section 5.4. G.S. 143-215.10G reads as rewritten:

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

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

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

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

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

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

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

Section 5.5. G.S. 90A-42(a) reads as rewritten:

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

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

(2) Temporary Certificate, $200.00;

(3) Temporary Certification Renewal, $300.00;

(4) Conditional Certificate, $75.00;

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

(6) Reciprocity Certificate, $100.00;

(6a) Voluntary Conversion Certificate, $50.00;

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

(8) Replacement of Certificate, $20.00;

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

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

Section 5.6. G.S. 90A-47.4(a) reads as rewritten:

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

Section 5.7. Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 5.8. This Part of this act shall not be construed to relieve any person of the obligation to pay any fee due for any activity described in this Part under the schedule of fees in effect prior to the date this Part becomes effective.

PART VI. INSURANCE LAW CHANGES

Section 6.1. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 6.2. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 6.3. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) 'Commissioner' includes an authorized representative or designee of the Commissioner.

(2) 'Examination' means an examination conducted under the Examination Law.

(3) 'Examiner' means any person authorized by the Commissioner to conduct an examination.

(4) 'Insurance regulator' means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) 'Person' includes a trust or any affiliate of a person."

Section 6.4. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 6.5. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.
(2) Reserves to be maintained by insurers issuing funding agreements.
(3) Accounting and reporting of funds credited under funding agreements.
(4) Disclosure of information to be given to holders and prospective holders of funding agreements.
(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 6.6. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 6.7. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

Section 6.8. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

Section 6.9. G.S. 58-7-170(c) reads as rewritten:

"(c) ~~The cost of investments made by insurers in mortgage loans, authorized by G.S. 58-7-179, with any one person shall not exceed the lesser of five percent (5%) of~~

~~the insurer's admitted assets or ten percent (10%) of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the Commissioner's consent if the admitted value of all mortgage loans held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer, if (i) the admitted value of all mortgage pass-through securities permitted by G.S. 58-7-173(17) does not exceed twenty-five percent (25%) of the admitted assets of the insurer and (ii) the admitted value of other mortgage loans permitted by G.S. 58-7-179 does not exceed forty percent (40%) of the admitted assets of the insurer.~~

~~An insurer that, as of October 1, 1993, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the Commissioner no later than January 31, 1994, a plan to bring the amount of mortgage investments into compliance with the limitations by January 1, 2001.~~

The cost of investments made by an insurer in mortgage loans authorized by G.S. 58-7-179 with any one person, or in mortgage pass-through securities and derivatives of mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), (8), or (17), and backed by a single collateral package, shall not exceed three percent (3%) of the insurer's admitted assets. An insurer shall not invest in additional mortgage loans or mortgage pass-through securities and derivatives of mortgage pass-through securities without the Commissioner's consent if the admitted value of all those investments held by the insurer exceeds an aggregate of sixty percent (60%) of the admitted assets of the insurer. Within the aggregate sixty percent (60%) limitation, the admitted value of all mortgage pass-through securities and derivatives of mortgage pass-through securities permitted by G.S. 58-7-173(17) shall not exceed thirty-five percent (35%) of the admitted assets of the insurer. The admitted value of other mortgage loans permitted by G.S. 58-7-179 shall not exceed forty percent (40%) of the admitted assets of the insurer. Mortgage pass-through securities authorized by G.S. 58-7-173(1), (2), or (8) shall only be subject to the single collateral package limitation and the sixty percent (60%) aggregate limitation. No later than January 31, 1999, an insurer that has mortgage investments that exceed the limitations specified in this subsection shall submit to the Commissioner a plan to bring the amount of mortgage investments into compliance with the specified limitations by January 1, 2004."

PART VII. EFFECTIVE DATES

Section 7.1. Part I of this act becomes effective July 1, 1998.

Section 7.2. Part II of this act becomes effective January 1, 1998.

Section 7.3. Part III of this act becomes effective January 1, 1999.

Section 7.4. Part IV of this act becomes effective January 1, 1999, and applies to fees assessed or paid on or after that date.

Section 7.5. Part V of this act becomes effective January 1, 1999.

Section 7.6. Part VI of this act is effective when it becomes law.

Section 7.7. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1429:
Proposed Senate Committee Substitute
Set Regulatory Fees/Various Fees/Insurance

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: September 22, 1998
SPONSOR: Representative Connie Wilson

The proposed Senate Committee Substitute for House Bill 1429 does the following:

- PART I sets the public utility regulatory fee at 0.09%.
- PART II lowers the insurance regulatory charge from 8.75% to 6%. This rate is lower than the rate set in the Senate version of Senate Bill 1199, which was set at 6.5%.
- PART III creates and increases various fees charged by the Secretary of State. With the exception of the effective date, these fee provisions are identical to the fee provisions the Senate passed in Senate Bill 1199 on July 1, 1998. The House also passed these fee provisions in Senate Bill 1199 on second reading on September 22, 1998.
- PART VI increases the autopsy fee from $400 to $1,000. The Senate passed this fee provision in Senate Bill 1199. The House passed this fee provision on second reading on September 22, 1998, in Senate Bill 1199.
- PART V codifies all of the existing fees related to water quality and increases some of them. The Senate passed these fee provisions on July 1, 1998, in Senate Bill 1199. The House passed these fee provisions on second reading on September 22, 1998.
- PART VI makes various changes to the insurance laws. Sections 6.1 through 6.9 are in House Bill 1492, 4th edition. The Senate passed Sections 6.1 through 6.8 in Senate Bill 1300 on July 15, 1998. The last section, Section 6.9, was added in the House Rules Committee.

PART I. Public Utility Regulatory Fee

PART I sets the public utility regulatory fee for fiscal year 1998-99 at 0.09%. This rate maintains the current 0.09% rate set in fiscal year 1997-98. The utility regulatory fee was first imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

PART II. Insurance Regulatory Charge

PART II. decreases the insurance regulatory charge from 8.75% to 6%. This charge was first imposed in 1991. Its purpose is to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory charge is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as Blue Cross/Blue Shield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

Last year, the General Assembly clarified that the premiums tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer for guaranty or solvency fund assessments. This change explains in part the reason why the charge is able to be decreased this fiscal year by 2.75%. Section 2.2 ensures that the regulatory charge will continue to be based upon gross premium tax collections by providing that the premium tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer under Chapter 105. The Economic Opportunity Act of 1989, passed earlier this session by the General Assembly, allows a tax credit against the gross premiums tax for investing in central administrative office property.

PART III. Secretary of State Fee Increases

PART III. contains the fee increases applicable to the Office of the Secretary of State. The revenue generated by these fee increases is credited to the General Fund. These fees become effective January 1, 1999.

- It increases the fee imposed to be commissioned or recommissioned as a notary public from $25 to $30. A commission must be renewed every five years.
- It converts the volume-based registration fee imposed on companies that sell investment securities and mutual funds to North Carolina investors to a flat $2,000 registration fee. The current volume-based registration fee is 1/10 of 1% of the maximum aggregate offering price, not to exceed $1,600.
- It authorizes the Secretary of State to charge a fee for fairness hearings. The amount of the fee is to be based upon the time and expenses incurred by the Secretary's staff. The fee may not be less than $500, nor more than $5,000.

  When securities are being exchanged, as opposed to purchased, a corporation may request the Securities Division to conduct a "fairness hearing" to determine whether the exchange rates and values are fair.

A fairness hearing conducted by the Securities Division exempts the corporation from having to register with the SEC – which is a very costly and time-consuming process.

The Director of the Securities Division conducts between 30 and 35 hearings annually. It takes a minimum of 5-6 hours to a maximum of 18-20 hours to prepare for and conduct a hearing and to generate a post-hearing Order. The Secretary recommends assessing a flat $500 fee for all hearings, and $200 per hour for all staff time devoted to a hearing in excess of 5 hours, not to exceed a maximum of $5,000.

- It increases the fee for authenticating documents from $6.25 to $10.

PART VI. Autopsy Fees

PART VI. increases the fee that may be charged for an autopsy by private contracted pathologists and the medical institutions from $400 to $1,000, effective for autopsies performed on or after January 1, 1999. An autopsy must be performed when a medical examiner, a district attorney, or a superior court judge decides that one is necessary. The cost of performing the autopsy is borne by the State unless the decedent is a resident of the county in which the death or fatal accident occurred. In that instance, the county pays the cost of the autopsy.

Of the 3,570 autopsies performed each year, approximately 2,010 are performed by private contracted pathologists and the remaining 1,560 are performed by the State through the Office of the Chief Medical Examiner in Chapel Hill and the Mecklenburg County Office. The State pays private contracted pathologists to perform 402 autopsies a year. However, the counties pay the State to perform 1,008 autopsies a year.

PART V. Water Quality Fees

PART V. codifies all of the existing fees related to water quality and increases many of them to accomplish two goals: To achieve greater equity among the groups that pay the fees and to maintain the goal of generating 30% of the program's costs through fees. The remaining 70% of the program's costs are funded through General Fund appropriations and federal monies. This Part of the bill was a recommendation of the Environmental Review Commission. It is based upon the recommendations of a 15-member working group that represented business and industry, agriculture, local governments, the conservation community, and economic development interests. These fees become effective January 1, 1999.

PART VI. Insurance Provisions

Section 6.1 amends the law that requires every North Carolina insurance company to maintain its records and assets in this State by making it clear that the Commissioner may permit a domestic insurer to maintain a part of its records or assets outside North Carolina.

Sections 6.2 and 6.3 are technical. They amend two statutory provisions to include a cross-reference to the new statute created in Section 6.4 of the bill.

Section 6.4 adds a new section to the Examination Law that would provide that the Department of Insurance may bill an insurance company for an examination of its records and assets, up to a maximum billing of $100,000 (unless there is a mutual agreement for a higher amount), in only three situations:

1. When a North Carolina insurer keeps records and assets out of North Carolina and the Department needs to examine those out-of-state records or assets.
2. When an insurer requests an examination, usually this happens when another company wants to acquire or merge with the insurer and the insurer wants an official "stamp of approval" on its financial situation.
3. When an insurer is financially unstable. The last item is important because intervention by the Department through an examination can keep the insurer from becoming insolvent, thus avoiding a liquidation and assessments by a guaranty fund on all other insurers. Billing an impaired insurer does not cause further deterioration in the insurer's financial situation.

Section 6.5 amends the law that gives the Commissioner authority to regulate the issuance and sale of funding agreements. In determining the appropriate level of reserves to be required by the Commissioner, the Commissioner's actuarial staff has determined that the statute should reference and permit the Commissioner to use relevant guidelines published by the Society of Actuaries or the American Academy of Actuaries, when determined by the Commissioner to be reasonable.

Section 6.6 changes the schedule for regular examinations of domestic insurers from at least once every three years to every five years.

Section 6.7 allows the Commissioner to adopt rules that are substantially similar to the National Association of Insurance Commissioners model rule for annual audited financial reports. **Section 6.8** permits the Commissioner to adopt expedited temporary rules in order to keep these rules consistent with the NAIC

model rule. The Department needs this flexibility to maintain its accreditation with the NAIC, which is critical for North Carolina insurance companies. This approach will make any rule changes subject to scrutiny through the permanent rulemaking process, which follows the temporary rulemaking process. It just allows changes to go into effect on a temporary basis before the next session of the General Assembly.

Section 6.9 deals with insurance company investments in mortgage loans and mortgage pass-through securities and derivatives of mortgage pass-through securities. The purpose of the rewrite is to clarify the existing statute and to set meaningful limitations on investments in mortgage loans and mortgage pass-through securities. The rewrite is supported by both the Insurance Department and the insurance industry.

The insurance industry is very active in the financial investment markets. The changes proposed in this section will allow North Carolina's insurance companies to compete in the financial investment markets without assuming undue risk. It does so by limiting the percentage of an insurer's total qualified assets that these investments can comprise:

- Investments in loans with any one entity are reduced from 5% to 3% of an insurer's assets.
- Overall limitations on mortgage and mortgage-related investments continues at 60% of assets.
- A limitation of 35% is set on mortgage pass-through securities and derivatives. The types of mortgage pass-through securities in which insurers can invest are those backed by the federal government, insured or guaranteed by the federal government, federal government bonds, debentures, or other securities, and private mortgage obligations that have been rated to qualify for investment by insurers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1126
Committee Substitute Favorable 7/9/97

Short Title: No Sales Tax on Pay Phones. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT LOCAL PAY PHONE SERVICES FROM SALES TAX.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-164.4(a)(4a) reads as rewritten:

"(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity or piped natural gas subject to tax under another subdivision in this section. Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. Gross receipts from sales of local telecommunications service shall not include receipts from service provided by means of public coin-operated pay telephone instruments and paid for by coin. A person who operates a utility is considered a retailer under this Article."

Section 2. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1126
Committee Substitute Favorable 7/9/97
Proposed Senate Committee Substitute H1126-PCS3189-LC

Short Title: No Sales Tax on Pay Phones. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT LOCAL PAY PHONE SERVICES FROM SALES TAX.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-164.4(a)(4a), as amended by S.L. 1998-22, reads as rewritten:

"(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity subject to tax under another subdivision in this section. Gross receipts from sales of local telecommunications service do not include receipts from service provided by means of public coin-operated pay telephone instruments and paid for by coin. A person who operates a utility is considered a retailer under this Article."

Section 2. This act becomes effective January 1, 2000, and applies to sales made on or after that date.

EXPLANATION OF HOUSE BILL 1126 (PCS):
No Sales Tax On Pay Phones

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: September 22, 1998
SPONSOR: Representative Miner

House Bill 1126 would exempt from sales tax pay telephone calls that are paid for by coin, effective January 1, 2000. Credit card calls and other calls not paid for by coin would not be exempt. The gross receipts from sales of all local telecommunications services are subject to State sales tax at 3% (G.S. 105-164.4(a)(4a)) and State gross receipts tax at 3.22% (G.S. 105-120). There is no local sales tax on these services.

When this bill was introduced in April 1997, pay telephone calls were regulated so that the owners were not permitted to raise the price of a call above 25¢. The owners complained that the sales tax forced them to operate at a loss because they could not increase the price of the calls to cover the tax. Last fall, however, pay telephones were deregulated and the price of most calls has increased by 40% or more, generating more than enough revenue to cover the 3% tax. The problem that gave rise to the bill has, therefore, already been solved.

Until 1984, local telecommunications were not subject to sales tax but were subject only to the State franchise tax at the rate of 6% of the gross receipts. (G.S. 105-120). In 1984, part of this gross receipts tax was converted to a State sales tax at 3%, which was the general State sales tax rate at that time.[1] The motivation for the 1984 change was to enable taxpayers to deduct the tax on their federal income tax returns. Shortly thereafter, Congress eliminated the deductibility of State sales taxes. The tax on local telecommunications services has, however, remained divided between franchise gross receipts tax under G.S. 105-120 (3.22%) and State sales tax under G.S. 105-164.4 (3%).

Current law is very inconsistent with regard to sales taxes on sales from coin-operated machines. The following table shows the current law treatment:

---

[1] When the general State sales tax rate was increased from 3% to 4% in 1991, the rate on local telecommunications service was not increased.

Type of Coin Sale	State Sales Tax	Local Sales Tax	Tax Break
Phone Calls	3%	None	None
Cigarettes	4%	2%	None
Soft Drinks	4%	2%	None
Other Vending Sales	4%	2%	50% Reduction
Washers & Dryers	0%	0%	Exempt

Coin-operated washers and dryers are exempt from sales tax. Sales taxes on other coin-operated vending machines, except soft drink and cigarette machines, are reduced by 50%. Sales taxes on coin-operated soft drink and cigarette machines are subject to the full 4% State sales tax and 2% local sales tax. Vending machine sales of food and beverages do not qualify for the reduced State sales tax on food, and are not subject to local prepared meals taxes.

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Wednesday, September 23**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brenda Dougherty	Sprint
R W Kaylor	Kaylor Law Firm
Jim Upchurch	CP&L
[illegible]	CP&L
Steve Woodson	NC Farm Bureau
Susan Markham	EGHS
Barry Hancock	EGHS
Kate McGuire	NCCNP
Jane Kendall	NCCNP
Bernard Allen	SOS
Robert Powell	Jordan Price Wall
[illegible]	NCAA

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Wednesday, September 23**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	C.Tics
Jim Blackburn	Counties
Cam Cover	BPMHL
Bill Mosen	Payter Communications
John Bowdish	Zeballey PA.
David Simmons	Zeballey P.A.
Roger Bone	Bone + Assoc -
John Palmisano	AT&T
RM Fry	DENR - DRP
Greg Rayford	NC DOR
B Summers	NC Equity

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Wednesday, September 23**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Stevens	DWQ
Coleen Sullins	DWQ
Patti Seawell	NC DOR
Alan Jernigan	NC AGO
Amy Gillespie	NC AGO
Ken Howell	NC BA
[illegible]	NC Dept. of Commerce
Preston Pate	NC Marine Fisheries
[illegible]	DENR
[illegible] Hale	NC DOI
Alicia Gregory	Poyner & Spruill

Crissy Parker Bone & Assoc. Raleigh NC

wcsm

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

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

Thursday, September 24, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1490** Extend Submerged Lands Claims.
Sequential Referral: None
Recommended Referral: None

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

H.B. **20** Increase Nonitemizer Charity Credit.
Draft Number: PCS6476
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)**1126** No Sales Tax on Pay Phones.
Draft Number: PCS3189
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #3)**1429** Set Reg. Fees/Company Exams.
Draft Number: PCS1619
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1448** 1998 Marine Fisheries Amendments.

Draft Number:	PCS 1620
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 5

Committee Clerk Comment: Sept 23

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, OCTOBER 7, 1998

12:00 NOON - ROOM 544 LOB

MEETING CALLED TO ORDER - SEN. HOYLE

BILLS TO BE CONSIDERED:

HB 74 - Credit for Long-Term Care Insurance - Rep. Cansler

HB 1055 - Arbitration of Seed Claims - Rep. Russell

ADJOURMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, OCTOBER 7, 1998

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, October 7, 1998 at 12:00 Noon in Room 544 LOB. There were 17 Members of the Committee present. Senator David Hoyle, Co-chairman, called the Meeting to order.

H. B. 74 - Credit for Long-Term Care Insurance

Representative Lanier Cansler came to explain the bill. Senator Cochrane moved for adoption of the proposed committee substitute bill for discussion, motion passed. Senator Kerr sent forth an amendment to the bill and moved that amendment be adopted, motion passed. After a time of discussion on the bill, Senator Cochrane moved for a "favorable" report on the amended pcs, motion passed. (Copy of Proposed Committee Substitute Bill, Explanation and Fiscal Note are included in Minutes).

H B. 1055 - Arbitration of Seed Claims

Representative Carolyn Russell came to explain the Bill. Senator Kerr moved for adoption of proposed committee substitute for discussion, motion passed. After a time of discussion on the bill, Senator Kerr moved for a "favorable" report on pcs, motion passed. (Copy of Bill, Explanation, Fiscal Note and Proposed Committee Substitute Bill are included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Sign In Sheet is Attachment #1
Committee Report is Attachment #2
Committee Report dated 10-15-98 is Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 74, PCS DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 18

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"recommendations to the 2004 Session of the 2003 General Assembly."

and on page 2, line 21, by deleting "2003" and substituting "2004";

and on page 1, line 15, by inserting after the word "claimed." the following sentence:

"The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SIGNED J Kerr

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

EXPLANATION OF HOUSE BILL 74:
Proposed Senate Committee Substitute
Credit for Long-Term Care Insurance

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: October 7, 1998
SPONSOR: Representative Cansler

The Proposed Senate Committee Substitute for **House Bill 74** allows a State individual income tax credit of 15% of the premium paid each year on long term care insurance. The credit may not exceed $350 for each policy for which the credit is claimed. The credit may not exceed the amount of tax owed by the taxpayer and there is no provision in the bill to allow unused portions of the credit to be carried forward. The credit becomes effective for taxable years beginning on or after January 1, 1999, and expires for taxable years beginning on or after January 1, 2003. The Legislative Research Commission will study the effect of the credit on the State's Medicaid costs and it must report its findings to the 2003 General Assembly.

A taxpayer may claim a credit for policies that provide coverage for either the taxpayer, the taxpayer's spouse, or a family member for whom the taxpayer provides over half of the support and whose income is below an exemption amount. A long term care insurance policy is one that provides only coverage of long term care services and that meets the following requirements:

1. Is guaranteed renewable.
2. Does not provide for a cash surrender value.
3. Provides that refunds and dividends may only be used to reduce future premiums or to increase future benefit.
4. Does not pay or reimburse expenses which are reimbursable under Medicare.
5. Satisfies consumer protection laws.

Under federal law, premiums paid on long term care insurance contracts are treated as deductible medical expenses. Under the medical expense itemized deduction, unreimbursed medical expenses may be deducted to the extent that the expenses exceed 7.5% of adjusted gross income. To the extent a taxpayer claims a deduction for long term care insurance premiums under the Code, the taxpayer will receive a deduction for State income tax purposes as well since North Carolina uses federal taxable income as the starting point for calculating State taxable income. To prevent a double tax benefit in those cases, the credit is limited to those expenses for which a deduction has not already been claimed. The language in the bill concerning no double tax benefit is identical to the language used in the credit for child health insurance enacted earlier this year.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 74 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Credit for Long Term Care Insurance

SPONSOR(S):

FISCAL IMPACT

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

	($millions) FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund		($7.98)	($8.87)	($9.82)	($10.89)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1999 and expires for taxable years beginning on or after January 1, 2003.

BILL SUMMARY: The bill provides an individual income tax credit equal to 15% of the premium paid each year on long term care insurance. The credit is nonrefunadable and capped at $350 per policy. The tax credit will sunset in tax year 2002. The Legislative Research Commission will study the effect of the credit on the state's Medicaid costs and report its findings to the 2003 General Assembly.

ASSUMPTIONS AND METHODOLOGY:

SURVEY

Due to unreliable survey data from the National Association of Insurance Commissioners on the number of North Carolinians with long term care insurance, the Life and Health Division of the North Carolina Department of Insurance conducted its own survey in May 1998. The Department surveyed 96 insurance companies that had obtained approval of at least one long-term care insurance product in North Carolina between June 1990 and May 1998. Of those surveyed, 85 provided adequate data within the short time frame of the survey. The survey revealed 64,236 North Carolinians were covered by long-term care insurance in 1997. There were 51,605 renewing insureds and 12,631 new insureds. Included in the new insureds are previous

policyholders who had let their policies lapse or had been terminated. The average premium was $1,397.64 for new insureds and $1,209.42 for renewals. The average weighted premium for all insured was $1,246.43.

POLICY ESTIMATES

Statistically, one year of reliable data is not sufficient information for estimating future growth in the price and the number of long term care policies. Officials with the Life and Health Division in the Department of Insurance recommend calculating both the growth in the number of policies and the growth rate for premiums at 5% a year. The premium amount in the chart below is a weighted average of 1) all current policies beginning in 1997 at $1,246 and growing 5% per year, and 2) all new policies beginning in 1998 at $1,398 and growing 5% a year. The tax credit amounts are within the $350 maximum set in the bill. Tax year 1999 cost will impact the FY 1999-00 General Revenue Fund budget.

	Premium Weighted Average	15% Tax Credit	Number of Policies	Estimated Cost
1997	**$1,246**	**$187**	**64,236**	**$12,005,708**
1998	**$1,316**	**$197**	**67,448**	**$13,314,196**
1999	**$1,389**	**$208**	**70,820**	**$14,755,387**
2000	**$1,466**	**$220**	**74,361**	**$16,352,028**
2001	**$1,547**	**$232**	**78,079**	**$18,118,292**
2002	**$1,632**	**$245**	**81,983**	**$20,069,493**
2003	**$1,721**	**$258**	**86,082**	**$22,222,167**

NONREFUNDABLE CREDIT

The Senate Committee Substitute for HB 74 provides a nonrefundable income tax credit for long term care insurance. Socio-demographic data on long term care insurance policy holders is needed to determine the number of taxpayers that have a tax liability great enough to use the proposed tax credit. Unfortunately, such data does not exist for North Carolina. However, national data is available from a 1994 Lifeplans, Inc. national survey of long term care insurance purchasers. The Health Insurance Association of America published the survey findings in a publication entitled "Who Buys Long-Term Care Insurance". The survey found the following about long term care insurance buyers:

average age = 69
39% male / 61% female
62% married / 27% widowed / 12% divorced, never married or separated
income status

less than $20,000	21%
$20,000 to $24,999	16%
$25,000 to $34,999	24%
$35,000 to $49,999	18%
$50,000 and over	20%

total liquid assets

less than $20,000	18%
$20,000 to $49,999	23%
$50,000 to $99,999	18%
$100,000 and over	41%

For this fiscal note, it is assumed that North Carolina long term care insurance purchasers have an income and marital status similar to the national average. In 1999, 62% of the long term care policy holders (43,908) will be married, filing joint tax returns and 38% (26,912) will be filing single returns. The Social Security Administration (SSA) reported that North Carolina retired workers received $729 per month in social security payments in 1997. For this note it is assumed all retirees earn the same payments. Since the North Carolina individual income tax does not apply to these payments, they are excluded from taxable income in the charts below. Also deducted from income are personal exemptions, standard deductions, and a portion of pension benefits. These adjustments are made to income before the state income tax is applied. As shown below, married couples with incomes below $35,000 and single filers with incomes below $20,000 will not have a state income tax liability and thus would not receive the long term care insurance credit.

Married (62%)

Income Status		Less than $20,000	$20,000 to $24,999	$25,000 to $34,999	$35,000 to $49,999	$50,000 and over
(Midpoint of Range)*		$13,739	$22,500	$30,000	$42,500	$100,000
Adjustments to income						
Exclusion of Social Security**		$13,739	$17,496	$17,496	$17,496	$17,496
Standard deduction		$5,000	$5,000	$5,000	$5,000	$5,000
Standard deduction elderly		$600	$600	$600	$600	$600
Personal Exemptions ($2500 per)		$5,000	$5,000	$5,000	$5,000	$5,000
Exclusion of retirement benefit		$4,000	$4,000	$4,000	$4,000	$4,000
Taxable Income		$0	$0	$0	$10,404	$67,904
Estimated Income Tax		$0	$0	$0	$516	$4,541
Proposed Credit					208	208
62% of 70,820 policies	43,908	21%	16%	24%	18%	20%
		9,221	7,025	10,538	7,904	8,782

* The first quintile is a weighted average based on Census data; the last quintile is an estimate.
** SSA reports the average payment per retired worker in NC in 1997 was $729/month.

Single (38%)

Income Status		Less than $20,000	$20,000 to $24,999	$25,000 to $34,999	$35,000 to $49,999	$50,000 and over
(Midpoint of Range)*		$13,739	$22,500	$30,000	$42,500	$100,000
Adjustments to income						
Exclusion of Social Security**		$8,748	$8,748	$8,748	$8,748	$8,748
Standard deduction		$3,000	$3,000	$3,000	$3,000	$3,000
Standard deduction elderly		$750	$750	$750	$750	$750
Personal Exemptions ($2500 per)		$2,500	$2,500	$2,500	$2,500	$2,500
Exclusion of retirement benefits		$2,000	$2,000	$2,000	$2,000	$2,000
Taxable Income		$0	$5,502	$13,002	$25,502	$83,002
Estimated Income Tax		$0	$330	$780	$1,573	$5,598
Proposed Credit			208	208	208	208
38% of 70,820 policies	26,912	21%	16%	24%	18%	20%
		5,651	4,306	6,459	4,844	5,382

* The first quintile is a weighted average based on Census data; the last quintile is an educated guess.

** SSA reports average payment per retired worker in NC in 1997 was $729/month

The nonrefundable status of the credit would eliminate 45.8% of the long term care policy holders (32,435 individuals in 1999).

	Premium Weighted Average	15% Tax Credit	Number of Policies	54.2 % Eligible	Estimated Cost
1999	**$1,389**	**$208**	**70,820**	**38,384**	**$7,983,872**
2000	**$1,466**	**$220**	**74,361**	**40,304**	**$8,866,880**
2001	**$1,547**	**$232**	**78,079**	**42,319**	**$9,818,008**
2002	**$1,632**	**$245**	**81,983**	**44,435**	**$10,886,575**
2003	**$1,721**	**$258**	**86,082**	**46,656**	**$12,037,248**

TECHNICAL CONSIDERATIONS: The 1997 General Assembly conformed the state's income tax laws to changes Congress made in the Internal Revenue Code in 1996. Under federal law, premiums paid on long term care insurance contracts are treated as deductible medical expenses. Under the medical expense itemized deduction, unreimbursed medical expenses may be deducted to the extent that the expenses exceed 7.5% of adjusted gross income. Federal law also allows employers to offer long term care insurance as an untaxed benefit. The taxpayer claiming a deduction for long term care insurance premiums on their federal tax form, will also receive a deduction on their State income tax. In this case, this credit for long term care insurance will offer a limited double benefit.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: October 7, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 74*
Committee Substitute Favorable 6/9/97
Proposed Senate Committee Substitute H74-PCSX1623-RB

Short Title: Credit for Long-Term Care Insurance. (Public)

Sponsors:

Referred to:

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INDIVIDUAL INCOME TAX CREDIT FOR PREMIUMS PAID ON LONG-TERM CARE INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.28. Credit for premiums paid on long-term care insurance.**

(a) Credit. -- An individual is allowed, as a credit against the tax imposed by this Division, an amount equal to fifteen percent (15%) of the premium costs paid during the taxable year on a qualified long-term care insurance contract that offers coverage to either the individual, the individual's spouse, or a dependent for whom the individual was allowed to deduct a personal exemption under section 151(c)(1)(A) of the Code for the taxable year. The credit allowed by this section may not exceed three hundred fifty dollars ($350.00) for each qualified long-term care insurance contract for which a credit is claimed. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. A nonresident or part-year resident who claims the credit allowed by this subsection shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate.

(b) No Double Benefit. -- If the taxpayer claimed a deduction for health insurance costs of self-employed individuals under section 162(l) of the Code for the taxable

year, the amount of credit otherwise allowed the taxpayer under this section is reduced by the applicable percentage provided in section 162(l) of the Code. If the taxpayer claimed a deduction for medical care expenses under section 213 of the Code for the taxable year, the taxpayer is not allowed a credit under this section. A taxpayer who claims the credit allowed by this section must provide any information required by the Secretary to demonstrate that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year.

(c) Definition. -- For purposes of this section, the term 'qualified long-term care insurance contract' has the same meaning as defined in section 7702B of the Code."

Section 2. G.S. 105-160.3(b) is amended by adding a new subdivision to read:

"(6) G.S. 105-151.28. Credit for long-term care insurance."

Section 3. The Legislative Research Commission shall study the effectiveness of the credit enacted by this act. The Department of Revenue shall provide the Commission data on the usage of this credit, including profiles of taxpayer categories using the credit. The Division of Aging, Department of Human Resources, shall provide the Commission data on the effect of the credit on the State's Medicaid costs. The Commission shall report its findings and recommendations to the 2004 Session of the 2003 General Assembly.

Section 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1999, and expire for taxable years beginning on or after January 1, 2004. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97
Committee Substitute #2 Favorable 8/19/98

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer has reasonable cause to believe that he or she has suffered damages due to the failure of agricultural seeds or vegetable seeds to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seeds, crops, or plants. The buyer shall send a copy of the complaint to the dealer by certified or registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by certified or registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a state's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer who has received notice, either orally or in writing, that a buyer has reasonable cause to believe that he or she has suffered damage due to the failure of agricultural seeds or vegetable seeds sold by the dealer to perform as labeled, as warranted, or as a result of negligence, may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by certified or registered mail. The buyer may file a response to the request with the Commissioner of Agriculture within 10 days of receipt of the request for an investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Arbitration committee created; membership; duties.

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture and Consumer Services. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture and Consumer Services. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture and Consumer Services.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"§ 106-277.32. Duties of arbitration committee.

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, activities of the arbitration committee may include any of the following:

(1) Examine the buyer regarding the buyer's use of the seeds of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seeds alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seeds to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture and Consumer Services. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.

"**§ 106-277.33. Filing an action regarding a defective seed claim.**

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the arbitration committee. Statements of the parties and recommendations of the arbitration committee as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable."

Section 3. This section of this act and G.S. 106-277.31, as enacted by Section 2 of this act, are effective when they become law. The remainder of this act becomes effective December 1, 1998, and applies to complaints filed with the Commissioner of Agriculture pursuant to this act on or after that date.

EXPLANATION OF HOUSE BILL 1055:
Proposed Senate Finance Committee Substitute
Arbitration of Seed Claims

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: October 6, 1998
SPONSOR: Representative Carolyn Russell

The Senate Committee Substitute for **House Bill 1055** provides that a buyer of seed who brings a cause of action in court against a seed dealer for defective seeds is limited in the amount of damages the buyer can recover from the seed dealer unless the buyer first brings a complaint against the seed dealer before the Seed Board. Under the House version of this bill, the current voluntary system of seed dispute investigation is replaced with a mandatory, but non-binding arbitration. Under the House version of the bill, a buyer could not bring an action in court against a seed dealer unless the buyer first filed a complaint with the arbitration committee.

The Senate version of the bill replaces the current voluntary system North Carolina has with a substantially similar voluntary system. However, unlike the current system, a buyer's right to damages is limited if the buyer does not first seek the help of the voluntary Seed Board. The buyer's right to damages would be limited to actual expenditures paid by the buyer to other persons for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent, or other expenses incurred in connection with the cultivation of the seed alleged to be defective, less any value received by the buyer arising from the sale or transfer of any crops grown for the see in questions.

The Seed Board created by this act has one additional duty than the current investigation committee: to visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas. The Seed Board has substantially the same membership as the current investigation committee: representatives of farm groups, seed companies, universities, and the Department of Agriculture, and one farmer who is not connected in any way to selling seeds at retail or wholesale. The Seed Board's purpose is to address issues which are technical in nature: the buyer's use of the seed, the seed dealer's packaging of the see, an evaluation of the seed's product, an inspection of the affected site, etc.

Under the bill, seed dealers would be required to provide notice that North Carolina offers a special seed board as an alternative to filing a court action and that failure to seek the help of this board will limit the amount of damages the buyer may be able to recover in court. To initiate this procedure, the buyer must make a sworn complaint against the seed dealer, file the complaint with the Commissioner of Agriculture within time to permit the arbitration committee to inspect the seed, crops, or plants alleged to be defective before they are destroyed, and pay a filing fee of $100. The current filing fee is $10.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: H.B. 1055 SCS

SHORT TITLE: Arbitration of Seed Claims

SPONSOR(S): Representative Russell

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$1,850	$3,900	$4,100	$4,300	$4,500

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Agriculture.

EFFECTIVE DATE: Section 3 and 4 become effective when it becomes law. The remainder becomes effective January 1, 1999, and applies to agricultural and vegetable seed purchased on or after that date.

BILL SUMMARY: The bill allows the parties involved in a disagreement about the quality of agricultural seeds to request an investigation by a special "Seed Board", and participate in special arbitration. The bill directs the Agriculture Commissioner to appoint a five-member Seed Board. Three members will be appointed on the recommendations of the NCSU Agricultural Research Service Director, the Cooperative Extension Director, and the President of the North Carolina Seedmen's Association. The bill also directs the Commission to appoint one farmer (not connected to seed sales) and one Department employee to the Board. The committee must conduct an investigation when they receive a complaint from a buyer or a request for investigation from a dealer. The bill requires that the complaint be filed within a time period that allows for inspection of the affected seed, crops, or plants. Both dealers and buyers must pay a $100 fee when filing their complaint or request for investigation. Once a buyer files a complaint, they must notify the dealer. The deal has ten days to file a response. After the 10 day period, the Seed Board will begin their investigation, following the guidelines in the bill. The findings of the Seed Board are binding if the buyer and dealer have agreed, in advance, to abide by the decision of the Board. If legal action is taken by either party after the Board completes its

investigation, the committee's findings are admissible as evidence. If the buyer alleges damages and does not file a complaint with the Seed Board, their right to recovery in court is limited to their actual cultivation related expenses.

ASSUMPTIONS AND METHODOLOGY: According to the Department of Agriculture's legal staff, Georgia is the only state with a seed arbitration program substantially similar to the bill. The Georgia seed arbitration program has been in operation for three years. The Georgia program received eight (8) complaints or requests for investigation in 1995, fifteen (15) in 1996, and thirty (30) in 1997. They also report receiving more than 30 complaints and/or requests for investigation, so far, in 1998. Based on these estimates, and the relative size of the seed market, the North Carolina Department of Agriculture estimates that they will receive twenty-five (25) buyer complaints and twelve (12) dealer requests for investigation. Assuming each buyer and dealer pays the $100.00 filing fee, the bill would generate $3,700 in FY 1998-9 (37 Total complaints and requests for investigation X $100), if the bill were in effect for the entire year. The FY 1998-9 estimate shown in the table above represents the actual revenue expected in FY 1998-9 as adjusted for the January 1, 1999, effective date.

The North Carolina Department of Agriculture expects the number of complaints and/or requests for investigation to increase with the continued development of genetically modified crop varieties. These new varieties are resistant to pests and tolerate certain herbicides. Because these genetically modified seeds are more expensive (Since the introduction of these genetically modified seeds three years ago, national farm expenditures for seeds have increased an average of 7.5% per year.), and the risks associated with non-performance greater, farmers are likely to seek compensation for seed failure. This note assumes 5% annual growth in the number of filings.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:
DATE: October 6, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97
Committee Substitute #2 Favorable 8/19/98
Proposed Senate Committee Substitute H1055-PCS1622-RF001

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE INVESTIGATION AND RESOLUTION OF CLAIMS RESULTING FROM DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G. S. 106-277.2 reads as rewritten:

"**§ 106-277.2. Definitions.**

As used in this Article, unless the context clearly requires otherwise:

(1) The term 'advertisement' means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.

(2) The term 'agricultural seeds' shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.

(3) The term 'blend' means a mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same 'blend' designation; and for which research

data supports an advantage of the 'blend' over the singular use of either component variety. 'Blend' designations shall be treated as variety names.

~~(3)~~ (3a) The term 'Board' means the North Carolina Board of Agriculture as established under G.S. 106-2.

(3b) The term 'brand' means an identifying numeral, letter, word, or any combination of these, used with the word 'brand' to designate source of seeds.

(3c) The term 'buyer' means a person who buys agricultural or vegetable seed for the purpose of planting and growing the seed.

(4) The terms 'certified seeds,' 'registered seeds' or 'foundation seeds' mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.

(5) The term 'clone' means all the individuals derived by vegetative propagation from a single, original individual.

(6) The term 'code designation' means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).

(7) The term 'Commissioner' means the Commissioner of Agriculture of North Carolina or his designated agent or agents.

(8) The term 'date of test' means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(9) The term 'dealer' or 'vendor' shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.

(9a) The term 'Department' means the Department of Agriculture and Consumer Services as established in G.S. 106-2.

~~(9a)~~ (9b) The term 'distribute' means to provide seed for seeding purposes to more than five persons, but shall not include seed provided for educational purposes.

(10) The term 'germination' means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.

(11) The term 'grower' shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.

(12) The term 'hard seeds' means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.

(13) The term 'hybrid' means the first generation seed of a cross produced by controlling cross-fertilization within prescribed limits and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names. The Board of Agriculture shall prescribe minimum limits of pollination control (percent hybridity) for each hybridized species which will qualify to be labeled 'hybrid'.

(14) The term 'inbred line' means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.

(15) The term 'in bulk' refers to loose seed in bins, or open containers, and not to seed in bags or packets.

(16) The term 'inert matter' means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(17) The term 'kind' means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.

(18) The term 'labeling' includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(19) The term 'lot' means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.

(20) The term 'mixture' means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

(21) The term 'North Carolina seed analysis tag' shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

(22) 'Noxious-weed seeds' shall be divided into two classes:

a. 'Prohibited noxious-weed seeds' are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices

commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.

b. 'Restricted noxious-weed seeds' are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.

(23) The term 'official certifying agency' means

a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under a.

(24) The term 'origin' means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.

(25) The term 'other crop seeds' means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.

(26) The term 'person' shall include any individual, partnership, corporation, company, society or association.

(27) The term 'processing' means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(28) The term 'pure seed' means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(29) The term 'purity' means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.

(30) The terms 'recognized variety name' and 'recognized hybrid designation' mean the name or designation which was first

assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.

(31) The term 'screenings' includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(32) The term 'seed offered for sale' means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled 'not for sale as seed.'

(33) The term 'seizure' means a legal process carried out by court order against a definite amount of seed.

(34) The term 'stop-sale' means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

(35) The term 'treated' means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.

(36) The term 'variety' means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(37) The term 'vegetable seeds' shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.

(38) The term 'weed seeds' means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.

(39) The term 'wholesaler' shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.

~~(40) 'Blend' -- A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.~~

~~(41) 'Brand' -- An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds.~~"

Section 2. G.S. 106-277.29 is repealed.

Section 3. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Filing complaint; investigation; referral to Seed Board.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or as warranted, or as the result of negligence, the buyer may make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Department with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the Seed Board incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Investigation Requested by Dealer. -- Any dealer who has received notice, either orally or in writing, that a buyer believes that he or she has suffered damage due to the failure of agricultural or vegetable seed sold by the dealer to perform as labeled or as warranted, or as a result of negligence, may request an investigation by the Seed Board pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by registered mail. The buyer may file a response to the request with the Commissioner within 10 days of receipt of the request for an investigation.

(c) Referral to Seed Board. -- The Commissioner shall refer the complaint or request for investigation to the Seed Board to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"**§ 106-277.31. Notice required.**

Dealers shall legibly print or type on each seed container or affix a label on each seed container a notice in the following form or using reasonably equivalent language:

'**Notice of Claims Procedure for Defective Seed**

North Carolina provides an opportunity for persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted, or as a result of negligence, to have the matter investigated and heard before a special seed board as an alternative to filing a court action. To take advantage of this procedure, a purchaser of seed must file a complaint with the North Carolina Commissioner of Agriculture in time for the seed, crop, or plants to be inspected. Failure to follow this procedure will limit the amount of damages you

may be able to recover. Please contact the Commissioner of Agriculture for information about this claims procedure.'

"**§ 106-277.32. Seed Board created; membership; duties.**

(a) The Commissioner shall appoint a Seed Board composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the Board shall serve a four-year term at the discretion of the Commissioner. The Board shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the Board. Three members of the Board shall constitute a quorum and at least three board members must vote affirmatively for the Board to take any action.

(b) A clerk shall be appointed to serve the Board. The clerk shall be an employee of the Department. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the Board as directed by the chairperson.

(c) The Department shall provide administrative support for the investigation under this section. The Board shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(d) Members of the Board appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Members of the Board who are State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-6.

(e) The Attorney General shall represent the Board in any and all legal proceedings that may arise concerning or against the Board.

"**§ 106-277.33. Duties of Seed Board.**

(a) In conducting its investigation of claims referred by the Commissioner, the Seed Board may engage in the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the Board to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the Board.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The Board shall keep a record of its activities and reports on file in the Department. The Department shall transmit all findings and recommendations to the buyer and to the dealer within 30 days of completion of the investigation.

(c) No investigation shall be made by less than the whole membership of the Board unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the Board in reporting its findings and making its recommendations.

(d) The report of the investigation and the recommendations of the Seed Board shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of the complaint pursuant to G.S. 106-277.30.

"**§ 106-277.34. Actions regarding defective seed claims; evidence.**

(a) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the Seed Board. Statements of the parties and recommendations of the Seed Board as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable.

(b) In any court action where a buyer alleges that he or she suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or warranted, or as the result of negligence, and the buyer failed to make a sworn complaint against the dealer as set forth in G.S. 106-277.30, the buyer's right to recover damages shall be limited to actual expenditures paid by the buyer to other persons for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent, or other expenses incurred in connection with the cultivation of the seed alleged to be defective, less any value received by the buyer arising from the sale or transfer of any crops grown from the seed in question."

Section 4. The Cooperative Extension Service shall make information about the alternative claims procedure set forth in this act available to the farmers of the State. Among the means used to disseminate information about the program, the Cooperative Extension Service may consider the publication of brochures, inclusion of the material in relevant continuing education programs, and through routine contacts with farmers by county extension agents.

Section 5. G.S. 106-277.32 and G.S. 106-277.33, as enacted in Section 3 of this act, and Section 4 of this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 1999, and applies to agricultural and vegetable seed purchased on or after that date.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 10/7/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Gregory	Poyner & Spruill
Crissy Parker	Bone & Associates
Steve Woodson	NC Farm Bureau
Paula Upton	NC Farm Bureau
Brian	The Capital Group
Lu-Ann Coe	FFF
Jon Piercy	The Capital Group
Brent Summers	NC Equity
Bernard Allen	SOS
Dave Ly	NC Sierra Club
Nat Mund	Common Cause of NC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 10/7/'98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	Dept. of Revenue
Nancy Pomeranz	Dept. of Revenue
Stacy Flannery	NCANPHA
Glenn Tarnya	Rep. Alliance of N.C. N.C. Crop Protection Assn
David McLeod	NCDA & CS
James M. Warren	NCDA & CS
Susan Labarre	Nature Conservancy
Paula Lupton	Farm Bureau
Ed Regan	N.C. Assoc. of Co. Comm.
John Bourdeau	Zeb Alley P.A.
Patrice Roesler	NCACC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 10/7/98

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney Raleigh
Andy Romanet	N.C.L.M.
Alice Garland	Electric Cities
Mike Carreto	NCCBA
Kevin Howell	NCBA
[illegible]	[illegible]
Judy Bode	Wake Forest Univ.
Brenda Dougherty	Sprint

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, October 07, 1998

SENATOR HOYLE,
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)**1055** Arbitraation of Seed Claims

Draft Number:	PCS1622
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: none

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David W. Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, October 15, 1998

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)74 Credit for Long-Term Care Insurance

Draft Number:	PCSX1623
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up in Committee on10-7-98

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, OCTOBER 15, 1998

9:15 A.M. - ROOM 544

HB 1720 - Adoption & Safe Families Act - Representative Culpepper

SENATE FINANCE COMMITTEE

THURSDAY, OCTOBER 15, 1998

9:15 A.M. - ROOM 544

The Senate Finance Committee met on Thursday, October 15, 1998, at 9:15 A.M. in Room 544 with Senator John Kerr presiding. There were 10 committee members present.

Senator Kerr updated the Finance Committee members on what had been resolved as to the Budget negotiations.

H.B. 1720 - Adoption & Safe Families Act.

Representative Culpepper was recognized to explain his Bill. Senator Purcell sent forth an Amendment which was adopted by the Committee on his motion. Ms. Martha Walston, Staff Attorney, explained the Amendment. After a general discussion of the Bill, Senator Albertson moved for a Favorable Report, as Amended, and the motion carried. Copy of H.B. 1720 (SCS #4), Amendment, new Committee Sub (PCS 2432), Explanation and Fiscal Note included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors Sign Up Sheet is Attachment # 1
Committee Report is Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1720*
Committee Substitute Favorable 8/17/98
Committee Substitute #2 Favorable 9/14/98
Senate Judiciary Committee Substitute Adopted 10/13/98

Short Title: Adoption & Safe Families Act. (Public)

Sponsors:

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"**§ 7A-517. Definitions.**

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or

b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or

c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or

d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare. -- The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.

(3) Administrator for Juvenile Services. -- The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(3a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(4) Director of the Division of Youth Services. -- The person responsible for the supervision of the administration of institutional and detention services.

(5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

(6) Chief Court Counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.

(7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(8) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court. -- The District Court Division of the General Court of Justice.

(9a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(10) Court counselor. -- A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.

(11) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent juvenile. -- Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(14) Detention. -- The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.

(15) Detention home. -- An authorized facility providing secure custody for juveniles.

(15a) District. -- Any district court district as established by G.S. 7A-133.

(16) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(16.1) In loco parentis. -- A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(17) Intake counselor. -- A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge. -- Any district court judge.

(19a) Judicial district. -- Any district court district as established by G.S. 7A-133.

(20) Juvenile. -- Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and

privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile <u>has died as a result of suspected abuse or neglect or lives in a home where another juvenile</u> has been subjected to abuse or neglect by an adult who regularly lives in the home.

(22) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(23) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(24) Prosecutor. -- The assistant district attorney assigned by the district attorney to juvenile proceedings.

(25) Protective supervision. -- The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(25a) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. <u>If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.</u>

(26) Regional detention home. -- A state-supported and administered regional facility providing detention care.

(26a) Safe home. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect.

(27) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(28) Undisciplined juvenile. -- A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary

control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(29) Director of the department of social services. -- The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"**§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the

seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"§ 7A-576. Place of secure or nonsecure custody.

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or
(2) A facility operated by the Department of Social Services or
(3) Any other home or ~~facility~~ facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651,~~ section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. G.S. 7A-577 reads as rewritten:

"**§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.**

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of the right to have legal representation as provided in G.S. 7A-584 if the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings; or

(2) Release into the care of a responsible person or organization; or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

(1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and

(2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-577.1. Reasonable efforts.

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"**§ 7A-629. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Section 6. G.S. 7A-647 reads as rewritten:

"**§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a

juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance

abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"**§ 7A-651. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

~~(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for~~

~~the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody order.**

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent ~~reviews~~ review hearing within six months ~~at least every year~~ thereafter. The Director of Social Services shall make a timely ~~requests~~ request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered. The Director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other

person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from ~~the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
(5a) An appropriate visitation plan;
(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;
(6) When and if termination of parental rights should be considered;
(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-657.1. Permanency planning hearing.**

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the

progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to

make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"**§ 7A-659. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;

(2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the child.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

(e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 7A-289.27 reads as rewritten:

"**§ 7A-289.27. Issuance of summons.**

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S.

1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"**§ 7A-289.32. Grounds for terminating parental rights.**

The court may terminate the parental rights upon a finding of one or more of the following:

(1) Repealed by Session Laws 1979, c. 669, s. 2.

(2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).

(3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.

(3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the~~

~~child must be over the age of three months at the time of the filing of the petition.~~

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality

and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) 'Department' means the North Carolina Department of Health and Human Services.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) 'State' means a state as defined in G.S. 12-3(11).

(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"**§ 48-3-303. Content and timing of preplacement assessment.**

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;

(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;

(3) Physical and mental health, including any addiction to alcohol or drugs;

(4) Educational and employment history and any special skills;

(5) Property and income, and current financial information provided by the individual;

(6) Reason for wanting to adopt;

(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;

(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;

(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and

(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the

individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of

fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree

sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(1a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(5) Court. -- The district court division of the General Court of Justice.

(5a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(9) District. -- Any district court district as established by G.S. 7A-133.

(10) Judge. -- Any district court judge.

(11) Judicial district. -- Any district court district as established by G.S. 7A-133.

(12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not

seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of

procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-505. Place of nonsecure custody.**

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or ~~facility~~ facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. ~~Prior to placement~~ Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued

custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(g) Any order authorizing the continued custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"**§ 7B-506.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court

has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a);~~ 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made

concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-801. Hearing.**

(a) At any hearing authorized or required under this Subchapter, the court in its discretion shall determine whether the hearing or any part of the hearing shall be closed to the public. In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

(1) The nature of the allegations against the juvenile's parent, guardian, custodian or caretaker;

(2) The age and maturity of the juvenile;

(3) The benefit to the juvenile of confidentiality;

(4) The benefit to the juvenile of an open hearing; and

(5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

(b) No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

(c) The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time.

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order

placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile,

admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-905. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within ~~six months of~~ 90 days from of the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

~~(1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of~~

~~harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~ ~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-906. Review of custody order.**

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct ~~subsequent reviews at least every year thereafter.~~ a review hearing within six months thereafter. The director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters within six months of the date the order was entered.~~ matters. ~~The director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;
(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months;
(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the ~~department of social services, the juvenile, the parent, the guardian, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.
(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
(3) Goals of the foster care placement and the appropriateness of the foster care plan.
(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
(5a) An appropriate visitation plan.
(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
(6) When and if termination of parental rights should be considered.
(7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be

in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent, guardian, custodian, or caretaker without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(c) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1, as enacted in Part I of this act, is recodified as G.S. 7B-906.1 and reads as rewritten:

"**§ 7B-906.1. Permanency planning hearing.**

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster

parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. ~~7A-657(b),~~ 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-907. Posttermination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if

the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process

must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified as G.S. 7B-1101.1 and reads as rewritten:

"**§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1105. Issuance of summons.**

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the juvenile;

(2) Any person who has been judicially appointed as guardian of the person of the juvenile;

(3) The custodian of the juvenile appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;
(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;
(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;
(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and
(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1110. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.~~

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony

assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence."

Section 29. Sections 1 through 9 of this act become effective January 1, 1999, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective January 1, 1999, and apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act only become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

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

H1720-ASE-020 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator_____

moves to amend the bill on page 41, line 5, by rewriting the line to read:

"7B-801. ~~Adjudicatory hearing.~~ Hearing.

"~~The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~";

and on page 46, lines 14 and 15 by rewriting those lines to read:

"~~department of social services, the juvenile, the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will~~";

and on page 47, lines 4 and 5 by rewriting those lines to read:

"~~shall not be returned to the parent or other person who has assumed the status and obligation of a parent without being awarded legal~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

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

H1720-ASE-020 Page 2 of __

~~custody of the juvenile by a court without a hearing at which the court finds sufficient facts to show that the juvenile will receive~~".

SIGNED William N Pinnell
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1720*
Committee Substitute Favorable 8/17/98
Committee Substitute #2 Favorable 9/14/98
Senate Judiciary Committee Substitute Adopted 10/13/98
Proposed Senate Committee Substitute H1720-PCS2432-LA

Short Title: Adoption & Safe Families Act. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"**§ 7A-517. Definitions.**

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or

b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or

c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or

d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare. -- The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.

(3) Administrator for Juvenile Services. -- The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(3a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(4) Director of the Division of Youth Services. -- The person responsible for the supervision of the administration of institutional and detention services.

(5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

(6) Chief Court Counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.

(7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(8) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court. -- The District Court Division of the General Court of Justice.

(9a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(10) Court counselor. -- A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.

(11) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent juvenile. -- Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(14) Detention. -- The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.

(15) Detention home. -- An authorized facility providing secure custody for juveniles.

(15a) District. -- Any district court district as established by G.S. 7A-133.

(16) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(16.1) In loco parentis. -- A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(17) Intake counselor. -- A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge. -- Any district court judge.

(19a) Judicial district. -- Any district court district as established by G.S. 7A-133.

(20) Juvenile. -- Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and

privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile <u>has died as a result of suspected abuse or neglect or lives in a home where another juvenile</u> has been subjected to abuse or neglect by an adult who regularly lives in the home.

(22) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(23) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(24) Prosecutor. -- The assistant district attorney assigned by the district attorney to juvenile proceedings.

(25) Protective supervision. -- The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(25a) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. <u>If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.</u>

(26) Regional detention home. -- A state-supported and administered regional facility providing detention care.

(26a) Safe home. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect.

(27) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(28) Undisciplined juvenile. -- A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary

control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(29) Director of the department of social services. -- The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"**§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of <u>a juvenile's death as a result of suspected maltreatment or a report of</u> suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the

seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"**§ 7A-576. Place of secure or nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or
(2) A facility operated by the Department of Social Services or
(3) Any other home or ~~facility~~ facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651,~~ section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. G.S. 7A-577 reads as rewritten:

"**§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.**

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of the right to have legal representation as provided in G.S. 7A-584 if the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings; or

(2) Release into the care of a responsible person or organization; or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

(1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and

(2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-577.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"**§ 7A-629. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Section 6. G.S. 7A-647 reads as rewritten:

"**§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a

juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance

abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"**§ 7A-651. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

~~(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for~~

~~the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~ ~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody order.**

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent ~~reviews~~ review hearing within six months ~~at least every year~~ thereafter. The Director of Social Services shall make a timely ~~requests~~ request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered. The Director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other

person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from ~~the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(5a) An appropriate visitation plan;

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-657.1. Permanency planning hearing.**

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the

progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to

make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"**§ 7A-659. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;

(2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the child.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

(e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 7A-289.27 reads as rewritten:

"**§ 7A-289.27. Issuance of summons.**

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S.

1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"**§ 7A-289.32. Grounds for terminating parental rights.**

The court may terminate the parental rights upon a finding of one or more of the following:

(1) Repealed by Session Laws 1979, c. 669, s. 2.

(2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).

(3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.

(3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the~~

~~child must be over the age of three months at the time of the filing of the petition.~~

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality

and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) 'Department' means the North Carolina Department of Health and Human Services.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) 'State' means a state as defined in G.S. 12-3(11).

(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"**§ 48-3-303. Content and timing of preplacement assessment.**

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;

(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;

(3) Physical and mental health, including any addiction to alcohol or drugs;

(4) Educational and employment history and any special skills;

(5) Property and income, and current financial information provided by the individual;

(6) Reason for wanting to adopt;

(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;

(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;

(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and

(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. <u>If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.</u>

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the

individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of

fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree

sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(1a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(5) Court. -- The district court division of the General Court of Justice.

(5a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(9) District. -- Any district court district as established by G.S. 7A-133.

(10) Judge. -- Any district court judge.

(11) Judicial district. -- Any district court district as established by G.S. 7A-133.

(12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not

seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of

procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-505. Place of nonsecure custody.**

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or ~~facility~~ facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. ~~Prior to placement~~ Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued

custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(g) Any order authorizing the continued custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"**§ 7B-506.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court

has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a);~~ 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made

concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-801. ~~Adjudicatory hearing.~~ Hearing.**

~~The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~

(a) At any hearing authorized or required under this Subchapter, the court in its discretion shall determine whether the hearing or any part of the hearing shall be closed to the public. In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

(1) The nature of the allegations against the juvenile's parent, guardian, custodian or caretaker;

(2) The age and maturity of the juvenile;

(3) The benefit to the juvenile of confidentiality;

(4) The benefit to the juvenile of an open hearing; and

(5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

(b) No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

(c) The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time."

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent,

guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds

that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing

resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-905. Dispositional order.

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within ~~six months of~~ 90 days from of the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

~~(1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for~~

~~the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-906. Review of custody order.**

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct ~~subsequent reviews at least every year thereafter.~~ a review hearing within six months thereafter. The director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters within six months of the date the order was entered.~~ matters. ~~The director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;
(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months;
(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the ~~department of social services, the juvenile, the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.
(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
(3) Goals of the foster care placement and the appropriateness of the foster care plan.
(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
(5a) An appropriate visitation plan.
(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
(6) When and if termination of parental rights should be considered.
(7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by

G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(c) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1, as enacted in Part I of this act, is recodified as G.S. 7B-906.1 and reads as rewritten:

"**§ 7B-906.1. Permanency planning hearing.**

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent

providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. ~~7A-657(b),~~ 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-907. Posttermination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile.

The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and

consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified as G.S. 7B-1101.1 and reads as rewritten:

"**§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1105. Issuance of summons.**

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the juvenile;

(2) Any person who has been judicially appointed as guardian of the person of the juvenile;

(3) The custodian of the juvenile appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by

G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1110. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a

continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.~~

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has

aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence."

Section 29. Sections 1 through 9 of this act become effective January 1, 1999, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective January 1, 1999, and apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act only become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1720 (4th Edition):
Adoption & Safe Families Act

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: October 14, 1998
SPONSOR: Representative Culpepper

House Bill 1720 (4th Ed) is before Senate Finance, having been reviewed by the House Judiciary II and Senate Judiciary Committees. The bill has two parts. Part 1 makes changes to the North Carolina Juvenile Code and the Adoption Chapter so that these statutes comply with P.L. 105-89, The Adoption and Safe Families Act, 1997. Compliance will ensure continuation of federal funding for the foster care and adoption program. Sections 1-16 of Part I become effective January 1, 1999. Section 17 directs the Legislative Research Commission to study proposed changes to the juvenile justice system as contained in HB 1561 and SB 1513. (Juvenile Law Revision). Changes pertain to abuse, neglect, and dependency cases. Sec. 17 is effective upon becoming law.

Changes made in Part I to the current law reflect the requirements and intent of the federal law to assure that children are placed in safe homes in a timely manner; to expedite reunification of children when that is in the child's best interest; to place children permanently with relatives when appropriate; to terminate parental rights of parents who do not provide for their children; and to facilitate the timely adoption of children for whom reunification is inappropriate.

Part II of the bill makes conforming changes to the North Carolina Juvenile Code if Senate Bill 1260 (Juvenile Justice Reform Act) is enacted. Part II re-enacts the changes make in Part I, and repeals Part I changes effective June 30, 1999. Sections 18 - 28 become effective July 1, 1999.

The bill is before Senate Finance because of a fee imposed in Sec. 15, page 31, lines 32-38. Sec. 15 adds a new section to the adoption of minors law that requires mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county DSS. The section provides that the Department of Justice shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by the section. The Division of Social Services within DHHS shall bear the costs of implementing this section.

SUMMARY OF CHANGES IN PART I

Part I amends the N.C. Juvenile Code in Chapter 7A as follows:

Sec.1 adds new definitions for "aggravated circumstances" and "court of competent jurisdiction." The section amends the definition for "neglected juvenile" by adding that in determining whether a juvenile is a "neglected juvenile", it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect The reasonable efforts definition is amended by adding: If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

Sec.2 directs the Director of the Department of Social Services, upon receipt of a report of a juvenile's death as a result of suspected maltreatment , to immediately ascertain if other juveniles are in the home, and, if so, initiate an investigation.

Sec.3 requires a juvenile, meeting the requirements of nonsecure custody, to be placed in a relative's home, unless the court finds the placement is contrary to the best interests of the juvenile. The court must also consider specific federal laws that may apply. his finding must also be made by the court in a hearing to determine the need for continued nonsecure custody.

Sec.4.1 adds a new section to the Juvenile Code spelling out the reasonable efforts that the Department of Social Services must make to prevent or eliminate the need for placement of the juvenile in custody.

Sec.5 requires that an adjudicatory hearing be held no later than 60 days from filing of the juvenile petition, unless the judge orders a continuance for good cause. Under current law, the chief district court judge determines the date of the hearing. (An earlier version of the bill allowed the judge to exclude the general public from a hearing of an alleged undisciplined or delinquent juvenile, unless the juvenile moved for an open hearing. The judge was required to exclude the general public if the juvenile was alleged to be abused, neglected, or dependent. The 4th Edition of the bill retains the current law allowing the judge to exclude the public unless the juvenile moves that the hearing be open.)

Sec.6 provides that if a juvenile is placed in the custody or placement responsibility of county DSS, then the DSS director shall not allow unsupervised visitation or return of physical custody to the parent without a hearing wherein the court finds that the juvenile will receive proper care and supervision in a safe

home. When placing a juvenile in out-of-home care, the court must first consider placement with a relative.

Sec.7 provides that if a juvenile is placed in the custody or placement responsibility of a county DSS, then the court may order the director to direct a visitation plan approved by the court.

Sec.8 requires that a hearing to review a custody order be held 90 days from the dispositional hearing (now 6 months). A subsequent review hearing must be conducted 6 months thereafter. The bill clarifies that a foster parent, relative, or preadoptive parent is not a party to the proceeding solely based on receiving notice and an opportunity to be heard. In making its written findings, the court shall consider the following additional criteria: an appropriate visitation plan, and an independent living assessment if the juvenile is 16 or 17.

Sec.8.1 adds a new section to the Juvenile Code describing the requirements of a permanency planning hearing including written findings if the juvenile is not returned home. If a juvenile has been in placement outside the home for 15 of the last 22 months, or if the juvenile has been abandoned or is the child of a parent who has murdered or committed voluntary manslaughter of another child or the parent attempted to kill the child or another child of the parent, the court must order DSS to initiate proceedings to terminate parental rights. Exceptions to termination are if the permanent plan for the juvenile calls for placement with a relative or some other suitable person, termination is not in the best interest of the child, or DSS has not provided the juvenile's family with services necessary for the juvenile's safe return.

Sec.9 provides that at each placement review hearing after the termination of parental rights, the court may also consider information from a relative or preadoptive parents providing care for the child. Sec.9.1 avoids the necessity for a separate proceeding to terminate parental rights when the court currently has jurisdiction in abuse, neglect, or dependency proceeding.

Sec.10 adds any county DSS to whom placement responsibility for the child has been given by a court, to list of agencies that will receive summons in hearing for termination of parental rights. DSS must file an answer and is deemed a party.

Sec.11 adds new grounds for termination of parental rights as required by federal law:

- The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has

aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home, or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

- Parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court and the parent lacks the ability or willingness to establish a safe home.

Sec.11 also deletes language that deems a child to be willfully abandoned by the natural father if mother was willfully abandoned by and living apart from the father at time of child's birth even if father may not have known of child's birth.

SECTIONS 12 - 15 AMEND STATUTES DEALING WITH ADOPTION.
Sec.12 adds to the definition section a definition for "criminal history".

Sec.13 requires completion of an investigation of a selected prospective adoptive parent's criminal history and determination as to the person's fitness to have responsibility for the safety and well-being of children, before placement of a minor who is in the custody or placement responsibility of a county DSS.

Sec.14 requires county DSS, to include in preplacement assessment, a review of prospective adoptive parent's criminal history and, based upon the criminal history, a determination of the individual's fitness.

Sec.15 requires mandatory preplacement criminal checks of prospective adoptive parents and the fee requirement.

Sec.16 adds new section to State Bureau of Investigation statutes authorizing the Department of Justice to provide to the Department of Health and Human Services, Division of Social Services, the criminal history from the State and National Repositories of Criminal Histories of prospective adoptive parents. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records.

Sec.17 authorizes the LRC to study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other relevant issues, and the Commission shall report to the 1999 General Assembly.

PART II makes conforming changes to sections of the North Carolina Juvenile Code if Senate Bill 1260 (Juvenile Justice Reform Act) is enacted.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1720 (House Committee Substitute)

SHORT TITLE: Adoption & Safe Families Act

SPONSOR(S): Representative William Culpepper

(This fiscal note along with the attached certification, fulfills the requirements of G. S. 120-36.8, Certification of Legislation Required by Federal Law.)

FISCAL IMPACT

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

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	52,277	60,786	62,586	64,476	66,455
EXPENDITURES	147,676	165,621	171,429	177,525	183,909
NET COST	$95,399	$104,835	$108,843	$113,049	$117,454
POSITIONS:	1.0	1.0	1.0	1.0	1.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services, Division of Social Services and Administrative Office of the Courts

EFFECTIVE DATE: Sections 1-11, December 1, 1998; Sections 12-16, January 1, 1999; all remaining Sections are effective when the bill becomes law.

BILL SUMMARY:

House Bill 1720 incorporates into statute those requirements mandated by Public Law 105-89, The Adoption and Safe Families Act of 1997, passed by the U. S. Congress and signed into law by the President in the fall of 1997. The bill also authorizes the Legislative Research Commission to study changes to the Juvenile Justice System pertaining to child abuse, neglect and dependency.

Several sections in HB 1720 are technical in nature (e.g., Section 2 restores language repealed in error in S.L. 1997-309), simply moving statutes around while other sections are substantive changes as mandated by federal law. These sections are summarized below:

Section 4.1 requires permanency planning hearings to be held within 30 days after the court finds that reasonable efforts are not required or shall cease;

Section 5 specifies that adjudicatory hearings are to be held no more than 60 days from the filing of a petition;

Section 6 prohibits unsupervised visitation or return of physical custody to the parents of a juvenile who is removed from the home and placed under the custody of a county DSS without a hearing;

Section 7 reduces the time frame for holding first review hearings from 6 months to 90 days from the date of the dispositional hearings;

Section 8.1 requires the court to order, in certain circumstances, a department of social services to initiate a proceeding to terminate parental rights when a child in the custody of a local department of social services, has been placed outside of the home for 15 of the most recent 22 months;

Section 8.1 requires subsequent permanency planning hearings to be held every six months; and

Section 15 amends G. S. 48-3-309 to require preplacement criminal checks of prospective adoptive parents seeking to adopt children in the custody or placement responsibility of county departments of social services.

ASSUMPTIONS AND METHODOLOGY: The following assumptions were used:

Administrative Office of the Courts:

The Administrative Office of the Courts estimates that the bill will have some impact on the Judicial System. It estimates that Sections 5 and 8 will have a substantial impact on the Judicial System. Specifically, it is anticipated that there will be a substantial increase in court time due to (1) more filings of petitions to terminate parental rights, (2) additional hearings on the issue of unsupervised visitation, and (3) additional hearings due to the requirement that first review hearings must be held 90 days after the dispositional hearings. **However, AOC is unable to determine the cost impact due to a lack of data needed to estimate the number of additional hearings and the increase in court time resulting from these expedited hearings.**

Other sections in the bill impact on the time within which certain hearings must be held., however AOC cannot estimate the impact of these provisions but assume the impact will be minimal.

Department of Health and Human Services:

1. Estimated 2,300 preplacement criminal history checks for prospective adoptive parents will be conducted during FY98/99; criminal history checks for prospective adoptive parents are estimated to grow approximately 5% each year thereafter;

2. Each complete criminal check costs $48 each ($5 Sheriff/local check; $5 fingerprinting; $14 State Bureau of Investigation; and $24 Federal Bureau of Investigation;

3. Approximately 62% of all criminal history checks are Title IV-E eligible; and
4.
5. Federal receipts (Title IV-E) will partially offset costs for allowable staff and criminal checks (50% federal share).

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Karen Hammonds-Blanks and Marilyn Chism

APPROVED BY:
DATE: August 31, 1998

Memorandum

Date: October 14, 1998

To: Representative Culpepper

From: Gann Watson, Staff Attorney, gannw@ms.ncga.state.nc.us

Subject **H1720 - Adoption Federal Requirements - Certification**

G.S. 120-36.8 requires that every introduced bill that proposes any change in the law which purports to implement federal law or purports to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds, shall have attached a certification identifying the federal law. The certification is to be provided by the Fiscal Research Division in consultation with Bill Drafting/General Research.

House Bill 1720 makes changes to State law to ensure that the State is in compliance with Public Law 105-89, The Adoption and Safe Families Act of 1997. Compliance with P.L. 105-89 is required in order for the State to continue to receive federal funds for the State's foster care and adoption program.

The purpose of the federal law is to assure safe homes for children in a timely manner, expedite reunification of families when reunification is in the child's best interest, provide for permanent placement of children with their relatives when appropriate and in the child's best interest, initiate proceedings to terminate parental rights when parents have not provided for their children or have subjected their children to an unsafe home environment, and to facilitate timely adoption of children for whom reunification with the family is inappropriate. In order to accomplish these purposes, federal law requires the following:

the health and safety of children must be of paramount concern when making reasonable efforts to keep children in the home or reunify families when children have been removed; initiate proceedings to terminate parental rights for certain children in foster care; and require criminal history record checks on foster parents and prospective adoptive parents. These federal requirements also necessitate changes in State law pertaining to permanency planning hearings and to the time lines for adjudicatory, dispositional, and review stages of custody order hearings.

Sections 1- 16 and Section 18 are necessary changes in State law in order to comply with P.L. 105-89. Section 17 appropriates funds to implement the criminal history record checks required for foster care and prospective adoptive parents. Section 2 includes a technical change to the law to restore language deleted in error in S.L. 1997-390.

/gw

This certification has been reviewed and approved for distribution.

VISITOR REGISTRATION SHEET

FINANCE COMMITTEE — THURSDAY, OCTOBER 15

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Lewis	Sec. of State
Ed Regan	N.C. Assoc. of Co. Comm.
Andy Ellis	WLSR
Steve Woodson	NC Farm Bureau
Hugh Tilson	NCHA
Peyton Zimmerman	GP
Janet Hamrick	DHHS-DSS
JoAnn Lamm	DHHS-DSS
Chuck Harris	DHHS-DSS
Shawnese Ransome	DHHS-DSS
Alondra Justice	DHHS-DSS

VISITOR REGISTRATION SHEET

FINANCE COMMITTEE — THURSDAY, OCTOBER 15

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Kostic	NCFPC
AL DEITCH	YA TO/DOA
Paula Hoey	Covenant w/ NC's Children
Christina Medlin	Covenant w/ NC's Children

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, October 20, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS)**1720**

Adoption & Safe Families Act.

Draft Number:	PCS2432
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Oct. 15 HB 1720

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, OCTOBER 27, 1998

2:17 P.M. - ROOM 1027

H.B. 1402 - Disapprove Neuse River Basin Rule.

H.B. 1528 - Modify Long Beach Room Tax.

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, OCTOBER 27, 1998

10 A.M. - ROOM 544

H.B. 1527 - Yaupon Beach Special Assessments - Rep. Redwine

SENATE FINANCE COMMITTEE

TUESDAY, OCTOBER 27, 1998

10:00 A.M. - ROOM 544

The Senate Finance Committee met on Tuesday, October 27, 1998, at 10 A.M. in Room 544 with Senator John Kerr presiding. There were 11 committee members present.

H.B. 1527 - Yaupon Beach Special Assessments.

Representative Redwine could not be present and Ms. Cindy Avrette, Staff Attorney, explained the Bill. At the conclusion of her explanation, Senator Purcell moved for a Favorable Report and the motion carried. Copy of Bill included in the Minutes.

Senator Kerr announced that the Finance Committee would meet again during session today in Room 1027.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1527

Short Title: Yaupon Beach Special Assessments. (Local)

Sponsors: Representative Redwine.

Referred to: Local and Regional Government I, if favorable, Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF YAUPON BEACH TO MAKE SPECIAL ASSESSMENTS FOR THE INSTALLATION OF UTILITIES UNDERGROUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 825 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the ~~Town~~ Towns of Caswell ~~Beach.~~ Beach and Yaupon Beach."

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

VISITOR REGISTRATION SHEET

Finance — Oct 27, 1998

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS
Frank Lewis	SOS
Michelle Cook	Weyerhaeuser
Gene Upchurch	CP&L
John McAlister	Duke Energy
Mark Benson	Capitol Group
Mike Carroll	NCCBA
Ken Kaylor	Kaylor Consulting

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, October 27, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1527** Yaupon Beach Special Assessments.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Oct 27 HB 1527

SENATE FINANCE COMMITTEE

TUESDAY, OCTOBER 27, 1998

2:17 P.M. - ROOM 1027

The Senate Finance Committee met on Tuesday, October 27, 1998, at 2:17 P.M. in Room 1027 for the second meeting of the day. Senator David Hoyle presided and Committee members present for session were in attendance at the Finance meeting.

H.B. 1402 - Disapprove Neuse River Basin Rule.

Mr. George Givens, Staff Attorney, explained this Bill which had been heard in Senate Agriculture earlier today. At the conclusion of Mr. Givens' explanation, Senator Albertson moved for a Favor Report for the Bill (SCS) and the motion carried. Copy of SCS # 4 included in the Minutes.

H.B. 1528 - Modify Long Beach Room Tax.

This bill had previously been heard in Finance and was back before the Committee. Senator Winner moved for the adoption of a Committee Substitute and after discussion, this motion was withdrawn. Senator Gully moved for the adoption of a new Committee Substitute which changed the Bill back to its original language and the motion carried. Senator Hoyle moved for a Favorable Report for the new Committee Sub and the motion carried. Copy of Committee Sub (SCS # 3) and new Committee Sub (SCS # 4) included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Reports (3) are Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98
Committee Substitute #2 Favorable 8/24/98
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 10/27/98

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.

Section 1.3. **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 1.8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 1.4. **Alternatives to maintaining riparian buffers; compensatory mitigation fees.** -- (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of the revised temporary rule and permanent rule required by Section 1.8 of this act. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a

private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:

a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 1.5. **Riparian Buffer Restoration Fund.** -- (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.21. Riparian Buffer Protection Program; Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the

Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 1.6. **Delegation of riparian buffer protection requirements to local governments.** -- (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 1.7. **Recognition of vested development rights.** -- (a) Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 1.8 of this act to development with vested rights recognized or established under the common law prior to the date this Part becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 22 July 1997.

(b) The Commission shall not adopt rules that confer or restrict a vested right to undertake or complete development.

(c) It is the intent of the General Assembly that this section apply only to the particular circumstances that are the subject of this Part. This section does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government to any other environmental program.

Section 1.8. **Revision of temporary rule 15A NCAC 2B.0233; adoption of a permanent rule to replace the temporary rule.** -- (a) The Commission shall revise temporary rule 15A NCAC 2B.0233 in accordance with this section. The Commission shall:

(1) Establish a method for determining the presence of surface waters on a particular parcel or tract of land in the Neuse River Basin. The Commission shall establish a method that is scientifically valid, easily understandable, efficient, consistent, reliable, and cost-effective, including a method for resolving disputes regarding the presence of surface waters on any particular parcel or tract of land.

(2) Establish methods to determine the point from which to measure the landward extent of zones within a protected riparian buffer appropriate to the different regions of the Neuse River Basin.

(3) Determine, based on drainage area, those segments of intermittent streams to which the riparian buffer protection requirements do not apply. The Commission may establish different drainage areas for segments of intermittent streams located in different parts of the Neuse River Basin on the basis of topography and other relevant factors.

(4) Define forest vegetation.

(5) Establish a clearly defined set of exemptions and uses that will be allowed within a riparian area.

(6) Establish criteria to determine whether there exists a practical alternative to the loss of the riparian buffer.

(b) All provisions that the Commission finds to be necessary to revise temporary rule 15A NCAC 2B.0233 and to implement the revised temporary rule shall be set out in the revised temporary rule. The Commission and the Department may develop and use guidance documents and other statements that concern only the internal management of the Commission and the Department. Neither the Commission nor the Department may develop or use any guidance document or other statement that directly or substantially affects the procedural or substantive rights or duties of any person not employed by the Commission or the Department unless those documents are set out in rules adopted in accordance with the provisions of Article 2A of Chapter 150B of the General Statutes.

(c) The Commission shall develop revisions to temporary rule 15A NCAC 2B.0233 with the assistance and advice of the Stakeholder Advisory Committee appointed for that purpose as provided in Section 1.10 of this act. Notwithstanding G.S. 150B-21.1(d), the revised temporary rule shall not expire until the permanent rule required by subsection (d) of this section becomes effective.

(d) Once temporary rule 15A NCAC 2B.0233 has been revised as required by this section, the Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the revised temporary rule.

Section 1.9. **Commission to review the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.** -- The Commission shall review the implementation of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy. As a part of this review, the Commission shall assess progress toward implementation of the Management Strategy, achievement of the nitrogen reduction goal established by Chapter 572 of the 1995 Session Laws (1996 Regular Session) and any other milestones related to the effort to improve water quality in the Neuse River and Neuse estuary established by the Commission, and the impact of the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy on the regulated community. The Commission shall report the results of this review, including any recommendations relative to water quality in the Neuse River and Neuse estuary, to the Environmental Review Commission no later than 1 December 2000. The Commission shall conduct a second review and report the results, including any recommendations, to the Environmental Review Commission no later than 1 December 2001.

Section 1.10. **Stakeholder Advisory Committee.** -- (a) The Commission shall develop the rules required by Sections 1.4 and 1.6 of this act and the revisions to temporary rule 15A NCAC 2B.0233 and the permanent rule required by Section 1.8 of this act with the assistance of a Stakeholder Advisory Committee. The Stakeholder Advisory Committee shall consist of 23 members as follows:

(1) A member of the public at large who shall serve as Chair of the Stakeholder Advisory Committee, appointed by the Secretary.

(2) A member of the Environmental Management Commission, appointed by the Chair of the Commission.
(3) The Director of the Division of Water Quality or the Director's designee.
(4) The Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers or the Chief's designee, if the Wilmington District office agrees to make an appointment.
(5) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(6) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.
(9) The Chair of the Upper Neuse River Basin Association, Inc., or the Chair's designee.
(10) The President of the Lower Neuse River Basin Association or the President's designee.
(11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
(12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.
(13) The Executive Director of the North Carolina Aggregates Association, or the Executive Director's designee.
(14) The President of North Carolina Citizens for Business and Industry or the President's designee.
(15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.
(17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
(18) A commercial land developer appointed by the Secretary.
(19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
(20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
(21) The President of the Neuse River Foundation, Inc., or the President's designee.
(22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.

(23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this Part.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 1.11. **Erosion control plans consistent with riparian buffer requirements.** -- (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

(b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 1.12. **Temporary rules authorized.** -- (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this Part and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 October 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 1.8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this Part no later than 1 April 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 1.11 of this act until 1 October 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary to implement Section 1.11 of this act no later than 1 April 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 1.11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 1.11 of this act.

Section 1.13. **Department may accept donations of real property.** -- The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 1.14. **Commission to establish riparian buffer maintenance and restoration goal.** -- The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 1.15. **Report on implementation of Part to the Environmental Review Commission.** -- The Commission and the Department shall jointly report to the Environmental Review Commission on progress in implementing this Part on or before 15 January 1999 and 1 April 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this Part, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 1.16. **Repeal of unnecessary reporting requirement.** -- Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 1.17. **Effective date of Part.** -- This Part is effective when this act becomes law.

PART II. TEMPORARY RULES GOVERNING COASTAL ENERGY FACILITIES AUTHORIZED

Section 2.1. Notwithstanding G.S. 150B-21.1(a) and 26 NCAC 2C.0102(11), the Coastal Resources Commission may adopt temporary rules governing coastal energy facilities until 1 July 2005.

Section 2.2. This Part is effective retroactively to 25 September 1998.

PART III. 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

Section 3.1. G.S. 143-215.74 reads as rewritten:

"**§ 143-215.74. Agriculture cost share program.**

(a) There is created the Agriculture Cost Share Program for Nonpoint Source Pollution Control. The program shall be created, implemented, and supervised by the Soil and Water Conservation Commission.

(b) The program shall be subject to the following requirements and limitations:

(1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.

(2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.

(3) Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.

(4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.

(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or

equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality.

(6) Except as provided in subdivision (8) of this subsection, State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the ~~cost (which~~ cost, which may include in-kind ~~support)~~ support of the practice, with a maximum of seventy-five thousand dollars ($75,000) per year to each applicant.

(7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

(8) For practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the program shall be limited to seventy-five percent (75%) of the average cost of each practice, with the remainder paid from funding from the Conservation Reserve Enhancement Program, other available federal funds, other State funds, or the assisted farmer, whose contribution may include in-kind support of the practice.

(c) The program shall be reviewed, prior to implementation, by the Committee created by G.S. 143-215.74B. The Technical Review Committee shall meet quarterly to review the progress of this program.

(d) State funds for the program shall remain available until expended for the program.

(e) The Soil and Water Conservation Commission shall report ~~no later than January 31, 1997, and annually thereafter~~ on or before 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

Section 3.2. This Part becomes effective when this act becomes law.

PART IV. REVISE REPORTING REQUIREMENTS

Section 4.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.9A. Reports.**

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

(1) The names and locations of all persons permitted under G.S. 143-215.1(c).

(2) The number of compliance inspections of persons permitted under G.S. 143-215.1(c) that the Department has conducted since the last report and the total number of inspections for that calendar year.

(3) The number of violations found during each inspection, including the date on which the violation occurred and the nature of the violation; the status of enforcement actions taken and pending; and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(4) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.2. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.10H. Reports.**

(a) The Department shall submit quarterly status reports to the Environmental Review Commission and the Fiscal Research Division as required by this section. Each report shall include:

(1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report and a total for that calendar year.

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation has conducted since the last report and a total for that calendar year.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation that have been conducted since the last report and a total for that calendar year.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation since the last report and a total for that calendar year.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation since the last report and a total for that calendar year.

(6) The number of compliance inspections of animal waste management systems that the Division of Water Quality has conducted since the last report and a total for that calendar year.

(7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Quality since the last report and a total for that calendar year.

(8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.

(9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division.

(b) The information to be included in the reports pursuant to subsection (a) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.

(c) The Department shall submit the quarterly status reports required by this section for the previous calendar quarter no later than 15 October, 15 January, 15 April, and 15 July."

Section 4.3. Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 4.4. Section 15.2 of S.L. 1997-443 is repealed.

Section 4.5. Section 12.5 of S.L. 1997-458 reads as rewritten:

"Section 12.5. The Department of Environment and Natural Resources, with the assistance of the Utilities Commission, the Local Government Commission, ~~and~~ the Environmental Management Commission, ~~with the assistance of~~ and other State ~~agencies,~~ agencies as appropriate, shall jointly study issues relating to publically owned treatment works that persistently fail to comply with Article 21 of Chapter 143 of the General Statutes, rules adopted pursuant to that Article, or other federal and State laws, regulations, and rules for the protection of public health and the environment. The ~~Commissions~~ Department shall make a specific finding as to whether a State agency should assume control of a persistently noncomplying treatment works and, if so, how the State agency would assume control and operate the treatment works. ~~The Utilities Commission, the Local Government Commission, and the Environmental Management Commission shall jointly present their~~ The Department shall report its findings and recommendations, including any legislative

proposals, to the ~~1998 Regular Session of the 1997 General Assembly.~~ Environmental Review Commission on or before 1 October 1999."

Section 4.6. This Part becomes effective when this act becomes law.

PART V. MISCELLANEOUS PROVISIONS

Section 5.1. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.3. This Part becomes effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1528
Committee Substitute Favorable 6/17/98
Senate Finance Committee Substitute Adopted 10/26/98

Short Title: Long Beach Room Tax/North Topsail Beach. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION AND TO AUTHORIZE THE TOWN OF NORTH TOPSAIL BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional

room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 3. North Topsail Beach occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of North Topsail Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. North Topsail Beach shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the North Topsail Beach Tourism Development Authority. Of the net proceeds of the tax levied under this section for the first 24 months the tax is in effect, the Authority must use at least twenty-five percent (25%) to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of

tourist-related amenities, and to address health, safety, and welfare issues related to tourism. Of the net proceeds of the tax levied after the first 24 months that the tax is in effect, the Authority must use at least two-thirds of the net proceeds of a tax levied under this section to promote travel and tourism in North Topsail Beach and must use the remainder for beach stabilization and maintenance, for construction of tourist-related amenities, and to address health, safety, and welfare issues related to tourism.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 4. North Topsail Beach Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of North Topsail Beach adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a North Topsail Beach Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The Authority shall be composed of five members, three of whom must be currently active in the promotion of travel and tourism in the town and two of whom must be residents of the town. The board of aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of North Topsail Beach shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 5. Town Administrative Provisions. -- Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, and Shelby, to the Town of North Topsail Beach, and to the municipalities in Brunswick County."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1528
Committee Substitute Favorable 6/17/98
Senate Finance Committee Substitute Adopted 10/26/98
Senate Finance Committee Substitute #2 Adopted 10/27/98

Short Title: Long Beach Room Tax. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection,

administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, October 27, 1998

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

FAVORABLE

H.B.(SCS)**1402** Neuse Buffers Rules/Other Env. Amends.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1402

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, October 26, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

H.B.(CS#1)**1528** Modify Long Beach Room Tax.

Draft Number:	PCSXA494
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1528 - July meeting

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

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

Tuesday, October 27, 1998

SENATOR HOYLE,

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)	**1528**	Long Beach Room Tax/North Topsail Beach.	
		Draft Number:	PCS1625
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1528 taken up during recess in Session 10/27/98

SENATE FINANCE COMMITTEE

TUESDAY, OCTOBER 27, 1998

2:30 P.M. - ROOM 1027

The Senate Finance Committee met during Senate Recess on Tuesday, October 27, 1998 at 2:30 P.M. in Room 1027. There were 21 Members of the Committee present. Senator David Hoyle, Co-chairman, called the Meeting to order.

H. B. 1402 - Neuse Buffers Rules/Other Env. Amends

George Givens, Staff Counsel, explained the bill to the committee. Senator Albertson moved for a "favorable" report, motion passed. (Copy of Explanation of Bill is included in Minutes).

H. B. 1528 - Long Beach Room Tax/North Topsail Beach

Senator Winner moved for adoption of proposed committee substitute bill for discussion, motion passed. Senator Kerr asked Senator Winner to withdraw her motion for proposed committee substitute so that a new proposed committee substitute could be drawn to take out Wilmington. Senator Winner agreed. Senator Gulley moved for adoption of a new proposed committee substitute bill for discussion, motion passed. Senator Hoyle moved for a "favorable" report on new pcs, motion passed. (Copy of new Proposed Committee Substitute Bill is included in Minutes).

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:
Committee Report on HB 1402 is Attachment #1
Committee Report on HB 1528 is Attachment #2

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

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 1528
Committee Substitute Favorable 6/17/98
Senate Finance Committee Substitute Adopted 10/26/98
Proposed Senate Committee Substitute H1528-PCS1625-RB

Short Title: Long Beach Room Tax. (Local)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF LONG BEACH TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX TO BE USED FOR BEACH RENOURISHMENT AND PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Long Beach only, is recodified and rewritten as Section 2 of this act.

Section 2. Long Beach occupancy tax. (a) Authorization and scope. The Long Beach Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Long Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection,

administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The governing body of a town may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Long Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

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

(Attachment #1)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, October 27, 1998

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

FAVORABLE

H.B.(SCS)**1402** Neuse Buffers Rules/Other Env. Amends.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1402, 1528

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, October 27, 1998

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

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

H.B.(CS#1)**1528** Modify Long Beach Room Tax.

Draft Number:	PCSXA494
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1528 - July meeting

1997

SENATE JUDICIARY COMMITTEE

MINUTES

SENATE JUDICIARY COMMITTEE

1997 - 1998

SENATOR ROY A. COOPER, III, CHAIRMAN

SENATE JUDICIARY COMMITTEE
1997

	ROOM	PHONE
Sen. Roy Cooper, Chairman	2117	3-5664
Sen. Fountain Odom, Vice Chair	300-B	3-5707
Sen. R. C. Soles, Vice Chair	2022	3-5963
Sen. Leslie Winner, Vice Chair	409	5-3038
Sen. Brad Miller, Vice Chair	621	3-9349
Sen. Fletcher Hartsell, Vice Chair	518	3-7223
Sen. Robert Carpenter, Ranking Minority Member	517	305875
Sen. Charlie Albertson	525	3-5705
Sen. Austin Allran	516	3-5876
Sen. Frank Ballance	523	5-3032
Sen. Patrick Ballantine	519	3-5856
Sen. John Blust	1117	3-7850
Sen. James Forrester	1121	3-5708
Sen. Wib Gulley	408	5-3036
Sen. Hamilton Horton	1406	3-32-72
Sen. David Hoyle	300-A	3-5734
Sen. John Kerr	526	3-5621
Sen. Donald Kincaid	1119	3-5745
Sen. Kenneth Moore (after 8/6/97)	1119	3-5745
Sen. Howard Lee	405	5-3030
Sen. Jeanne Lucas	620	3-4599
Sen. William Martin	411	5-3042
Sen. Tony Rand	300-C	3-9892
Sen. Eric Reeves	2111	3-3460
Sen. Bob Rucho	1113	3-5650
Sen. Robert Shaw	625	3-4809
Walker Reagan, Committee Counsel	545	3-2578
Brenda Carter, Co-Counsel	545	3-2578
Bill Gilkeson, Co-Counsel	545	3-2578
Susan Moore, Committee Clerk	2117	3-5664

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 27=	THOMPSON	INCREASE PENALTY/PYRAMID SCHEMES	*S -RE-REF COM ON APPROPR	05-06-97	06-25-97
H 61=	BROWN	GS 106 OBSOLETE LAWS	*R -CH. SL 97-0074	03-11-97	05-08-97
H 66=	BROWN	TRESPASS/THEFT OF PINE STRAW	*S -RE-REF COM ON APPROPR	03-03-97	04-07-97
H 115=	CULPEPPER	1997 TECHNICAL CORRECTIONS	*R -CH. SL 97-0456	04-22-97	08-19-97
H 137=	BRAWLEY	AGGRAVATING FACTOR/INJURE OFFICIAL	S -RE-REF COM ON APPROPR	02-26-97	06-25-97
H 139=	JUSTUS	CLARIFY SEX OFFENDER REGISTRATION	*R -CH. SL 97-0015	03-13-97	03-20-97
H 141=	JUSTUS	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	03-13-97	06-25-97
H 142=	JUSTUS	ACCESORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	03-11-97	04-03-97
H 144=	JUSTUS	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	03-11-97	04-03-97
H 147=	WEATHERLY	OUTLAW DOG FIGHTS	*R -CH. SL 97-0078	04-21-97	05-06-97
H 158	KISER	PRISON OFFENSES/INCREASE PENALTY	S -RE-REF COM ON APPROPR	03-25-97	04-07-97
H 159	KISER	PRISON ESCAPE PENALTIES	S -RE-REF COM ON APPROPR	03-25-97	04-07-97
H 174	NEELY	ACTIVE SENTENCE/TRIAL WAITING TIME	R -CH. SL 97-0079	04-09-97	05-13-97
H 175	NEELY	STRUCT. SENT./TECHNICAL AMENDS	*R -CH. SL 97-0080	04-10-97	05-13-97
H 176	IVES	EQUINE ACTIVITIES/LIABILITY	*R -CH. SL 97-0376	04-29-97	07-16-97
H 183	**BOWIE**	**DWI/FELONY PRIOR RECORD LEVEL**	***R -CH. SL 97-0486**	**04-28-97**	**08-04-97**
H 184	REDWINE	EXEMPT STATE HEALTH PLAN FROM APA	R -CH. SL 97-0278	03-27-97	06-25-97
H 191	HUNTER R	CERT. COPIES/CUSTODY & WILLS	R -CH. SL 97-0081	03-19-97	05-13-97
H 192	HUNTER R	COURTS COMMISSION MEMBERSHIP	R -CH. SL 97-0082	03-26-97	05-13-97
H 195	BOWIE	CLARIFY POST-RELEASE SUPERVISION	R -CH. SL 97-0237	04-09-97	06-10-97
H 197=	CULPEPPER	JUDICIAL TIMBER SALE/SEALED BID	*R -CH. SL 97-0083	03-13-97	05-07-97
H 202=	CULPEPPER	INCREASE MINIMUM UPSET AMOUNT	*R -CH. SL 97-0119	03-05-97	03-19-97
H 203=	CULPEPPER	COURTS SUPPLEMENT CLARK'S CALENDAR	R -CH. SL 97-0058	03-10-97	05-06-97
H 212	BRAWLEY	CLARIFY COMMUNITY-BASED CORRECTION	*S -REF TO COM ON JUDIC	03-27-97	
H 221	CULPEPPER	INITIAL APPEARANCE BY VIDEO	*R -CH. SL 97-0268	02-26-97	06-10-97
H 221	CULPEPPER	INITIAL APPEARANCE BY VIDEO	*R -CH. SL 97-0268	06-11-97	06-12-97
H 222	CULPEPPER	HABITUAL FELON DETERMINATION	*S -REF TO COM ON JUDIC	04-29-97	
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	03-13-97	03-17-97
H 267	SHERRILL	BOMB THREAT/FELONY-2	*S -REF TO COM ON JUDIC	03-11-97	
H 301	GARDNER	CHILD SUPPORT/FED. REQ.	*R -CH. SL 97-0433	06-19-97	08-11-97

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 315=	RUSSELL	STATE HIRES MOST QUALIFIED	*S -RE-REF COM ON ST GVT	04-28-97	04-28-97
H 333=	CULPEPPER	CLARIFY ATTY-IN-FACT GIFTS	*S -REF TO COM ON JUDIC	04-23-97	
H 336	EDDINS	VICTIM'S FAMILY WITNESS EXECUTION	*R -CH. SL 97-0070	03-18-97	05-07-97
H 344=	CLARY	MOTOR VEHICLE OCCUPANT RESTRAINTS	*S -RE-REF COM ON JUDIC	07-15-97	
H 354	HENSLEY	ELIMINATE CERTIFIED NOTICE	S -REF TO COM ON JUDIC	05-06-97	
H 374	BADDOUR	MODIFY VICTIMS COMPENSATION ACT	*R -CH. SL 97-0227	03-18-97	05-06-97
H 389	RAYFIELD	FELONY CHILD ABUSE/INCR. PENALTY	S -REF TO COM ON JUDIC	03-24-97	
H 402	SMITH	EXPUNGE INFRACTIONS	*R -CH. SL 97-0138	05-06-97	05-20-97
H 427	KISER	ASSAULT CORRECTIONS OFFICER	S -REF TO COM ON JUDIC	04-17-97	
H 431=	HOWARD	PUBLIC ASSISTANCE FRAUD	*R -CH. SL 97-0497	05-06-97	08-06-97
H 433=	GULLEY J	CONCEALED HANDGUN EXEMPTION	*R -CH. SL 97-0274	04-29-97	06-16-97
H 448	HACKNEY	GOVERNOR'S D.W.I. INITIATIVE	*R -CH. SL 97-0379	05-06-97	05-26-97
H 465	SUTTON	VOLUN. DISMISSAL/NOTIFY DEFENDANT	*R -CH. SL 97-0228	04-28-97	05-20-97
H 468	DECKER	NC DA'S M.V. RECOMMENDATIONS	*S -REF TO COM ON JUDIC	05-06-97	
H 470=	TALLENT	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	05-06-97	05-07-97
H 477	CANSLER	CPA EXAM AND RECORDS	R -CH. SL 97-0157	03-20-97	05-27-97
H 507	HUNTER R	MANDATORY JAIL FOR SOME D.W.I.	*S -REF TO COM ON JUDIC	05-06-97	
H 523	WILKINS	CONFISCATED GUN/LAW OFFICER USE	*R -CH. SL 97-0356	04-29-97	07-10-97
H 527=	JUSTUS	OPTOMETRY CHANGES	*R -CH. SL 97-0075	04-17-97	05-15-97
H 530	NEELY	PROFESSIONAL CORPORATION ACT AMEND	*R -CH. SL 97-0244	05-06-97	06-10-97
H 533	HACKNEY	EQUIT. DIST./DIVISIBLE PROP.	*R -CH. SL 97-0302	04-21-97	06-12-97
H 534	HACKNEY	SUPPORT ORDERS ENFORCEMENT	*S -REF TO COM ON JUDIC	04-29-97	
H 535	HACKNEY	EQUIT. DIST./RETIREMENT RTS.	*R -CH. SL 97-0212	04-17-97	06-10-97
H 581	HACKNEY	SEX EXPLOITATION ACT	*S -REF TO COM ON JUDIC	04-29-97	
H 584	JARRELL	ATTEMPTING TO ELUDE ARREST	*S -RE-REF COM ON APPROPR	04-29-97	08-12-97
H 588	ALLRED	UNLAWFUL TO REMOVE DOG COLLARS-2	*S -REF TO COM ON JUDIC	04-09-97	
H 594	STARNES	INJURY TO PREGNANT WOMAN	*S -REF TO COM ON JUDIC	05-06-97	
H 597	MCMAHAN	MUNICIPAL LEASE/VENTURE	*R -CH. SL 97-0233	05-06-97	06-09-97
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	04-28-97	06-09-97
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	07-16-97	07-17-97

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 615	BONNER	PUBLIC DEFENDER/DISTRICT 16B	R -CH. SL 97-0175	04-23-97	05-27-97
H 618	MITCHELL	WORKERS' COMPENSATION FRAUD	*R -CH. SL 97-0353	04-10-97	07-08-97
H 646	DAUGHTRY	REVISE UCC/CROP LIENS	*R -CH. SL 97-0336	04-23-97	06-10-97
H 652	SHERRILL	AUDITS	*R -CH. SL 97-0526	05-06-97	08-11-97
H 770=	KISER	AMEND MARIJUANA TRAFFICKING AMTS.	*S -RE-REF COM ON APPROPR	04-15-97	07-08-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX	*R -CH. SL 97-0255	06-02-97	06-18-97
H 823	CULPEPPER	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDIC	05-06-97	
H 853	NYE	AMEND PROFESSIONAL CORPORATION ACT	*R -CH. SL 97-0500	05-06-97	08-25-97
H 872=	GOODWIN	AMEND CIVIL PROCEDURE RULES	*S -REF TO COM ON JUDIC	05-06-97	
H 873	HUNTER R	AGE OF UNDISCIPLINED JUVENILES	*S -REF TO COM ON JUDIC	05-06-97	
H 891=	MITCHELL	WORKERS COMPENSATION MEDICAL CARE	*S -REF TO COM ON JUDIC	05-06-97	
H 898	DAUGHTRY	PUBLIC RECORDS LAW AMENDMENTS	*S -RE-REF COM ON RULES &	04-28-97	08-19-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -REF TO COM ON JUDIC	05-06-97	
H 907	BADDOUR	MEDIATED SETTLEMENT/FAMILY ISSUES	*R -CH. SL 97-0229	05-06-97	05-29-97
H 908	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -RE-REF COM ON JUDIC	05-06-97	07-07-97
H 908	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -RE-REF COM ON JUDIC	07-15-97	
H 915	MERCER	FIREFIGHTERS/NO CONFLICT	S -REF TO COM ON JUDIC	05-06-97	
H 929	MORRIS	DOMESTIC VIOLENCE CHANGES-2	*S -REF TO COM ON JUDIC	04-29-97	
H 936	BEALL	LIABILITY FOR LLAMA ACTIVITIES	*S -REF TO COM ON JUDIC	05-06-97	
H 954=	CULPEPPER	SUPREME COURT SESSIONS	R -CH. SL 97-0056	04-29-97	05-06-97
H 958	HIGHTOWER	CONCEALED HANDGUN LAWS AMEND.	*R -CH. SL 97-0238	05-06-97	05-29-97
H 995	IVES	AMEND TRESPASS/SURVEYORS	*S -REF TO COM ON JUDIC	05-06-97	
H 997	NEELY	NOTARY COMMISSION AMENDMENT	*S -RE-REF COM ON COMMERCE	04-28-97	06-23-97
H1008	WATSON	CHIROPRACTIC LICENSURE AMENDMENTS	*R -CH. SL 97-0230	05-06-97	06-03-97
H1012	SEXTON	SHOOTING RANGE PROTECTION	*R -CH. SL 97-0465	05-06-97	08-13-97
H1023	BADDOUR	PRETRIAL RELEASE & BOND FORFEITURE	*H -REF TO COM ON RULES	05-06-97	07-16-97
H1049	97 HSE JUDICII	INCREASE CRUELTY TO ANIMALS PENALTY	*S -REF TO COM ON JUDIC	05-06-97	
H1064	FOX	HOUSING AUTHORITY AMENDMENTS-2	*R -CH. SL 97-0473	05-06-97	07-31-97
H1071	CAPPS	PAY RENT TO STAY EJECTMENT	S -REF TO COM ON JUDIC	05-06-97	
H1086	MILLER G	AMEND OFFER OF JUDGEMENT RULE-2	*S -REF TO COM ON JUDIC	05-06-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1087	BAKER	MOTORIZED VEHICLE TRESPASS	*R -CH. SL 97-0487	05-06-97	08-11-97
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	05-06-97	
H1094	CULPEPPER	REPEAL/RECODIFY RAILROAD LAWS	*S -REF TO COM ON JUDIC	06-16-97	
H1114	EDDINS	BAD CHECK COLLECTIONS PILOT	*S -RE-REF COM ON APPROPR	07-28-97	07-31-97
H1122	GULLEY J	ADMIT DRUG/OPTOM. EVID./COURT SITE	*R -CH. SL 97-0304	05-06-97	07-08-97
H1124	CAPPS	FIRE/RESCUE PERSONNEL RECORDS CHECKS	S -REF TO COM ON JUDIC	05-06-97	
H1132	HUNTER R	DATE RAPE DRUGS	*R -CH. SL 97-0501	05-06-97	08-11-97
H1140	HUNTER R	LITTERING/REQUIRE COMM. SERVICES	*R -CH. SL 97-0518	05-06-97	06-03-97
S 1	GULLEY W	FULL DISCLOSURE ACT OF 1997	*R -CH. SL 97-0515	02-03-97	02-05-97
S 2	GULLEY W	SHORTER ELECTION YEAR	*H -REF TO COM ON RULES	02-03-97	03-03-97
S 3	JENKINS	LOBBYIST WAITING PERIOD	*H -RE-REF COM ON RULES	02-03-97	02-19-97
S 7=	COOPER	INCREASE DRUG PENALTIES	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 8	COOPER	STRUCTURED SENTENCING AMENDMENTS	S -REF TO COM ON JUDIC	02-03-97	
S 9=	MILLER B	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	02-03-97	04-07-97
S 10=	REEVES	ACCESSORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 11=	GULLEY W	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 12	PHILLIPS	HABITUAL DWI/ACTIVE TIME	S -RE-REF COM ON APPROPR	02-03-97	02-11-97
S 13	CONDER	CHANGE PRIMARY DATE-2	S -REF TO COM ON JUDIC	02-03-97	
S 14	JENKINS	RECLASSIFY PRISON OFFENSES	*S -RE-REF COM ON APPROPR	02-03-97	04-07-97
S 15=	BALLANCE	AGGRAVATING FACTOR/INJURE OFFICIAL	*S -RE-REF COM ON APPROPR	02-03-97	02-11-97
S 16	BALLANCE	CLARIFY COMMUNITY-BASED CORRECTIONS	*R -CH. SL 97-0057	02-03-97	03-20-97
S 21	CONDER	AUTHORIZATION FOR POLITICAL ADS	S -REF TO COM ON JUDIC	02-03-97	
S 27	RAND	VETO PROCEDURAL CHANGES	*R -CH. SL 97-0001	02-03-97	02-06-97
S 29=	JORDAN	INCREASE PENALTY/PYRAMID SCHEMES	S -RE-REF COM ON APPROPR	02-03-97	04-03-97
S 30	JORDAN	SPEEDING IN A WORK ZONE	*R -CH. SL 97-0488	02-03-97	04-30-97
S 39	**SHAW L**	**MODIFY SETOFF DEBT COLLECTION**	***R -CH. SL 97-0490**	**02-03-97**	**04-01-97**
S 46	MCDANIEL	FELONY TO SHOOT A HORSE	S -REF TO COM ON JUDIC	02-05-97	
S 55	HORTON	CHANGE PRIMARY DATE-3	S -REF TO COM ON JUDIC	02-06-97	
S 57	MCDANIEL	GUILTY BUT MENTALLY ILL	S -REF TO COM ON JUDIC	02-06-97	
S 61=	HARTSELL	MUNICIPAL INCORP. STUDY	*S -RE-REF COM ON RULES &	02-06-97	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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 62=	HARTSELL	ANNEXATION/MUNICIPAL SERVICES	S -RE-REF COM ON ST GVT	02-06-97	04-29-97
S 63=	HARTSELL	ANNEXATION CHANGES	S -REF TO COM ON JUDIC	02-06-97	
S 68	HOYLE	FEDERAL DRIVER'S PRIVACY ACT	S -REF TO COM ON JUDIC	02-10-97	
S 73=	ALBERTSON	GS 106 OBSOLETE LAWS	S -REF TO COM ON JUDIC	02-10-97	
S 75=	ALBERTSON	TRESPASS/THEFT OF PINE STRAW	*S -RE-REF COM ON APPROPR	02-10-97	04-07-97
S 79	HARTSELL	REPEAL MORE ANTIQUATED LAWS	R -CH. SL 97-0014	02-10-97	02-25-97
S 86=	HARTSELL	FAST-TRACK TECHNICAL AMENDMENTS	*R -CH. SL 97-0009	02-11-97	02-18-97
S 87=	HARTSELL	INVESTMENT SECURITIES UCC REWRITE	S -REF TO COM ON JUDIC	02-11-97	
S 89=	HARTSELL	1997 TECHNICAL CORRECTIONS	S -REF TO COM ON JUDIC	02-12-97	
S 90=	HARTSELL	REPEAL UCC BULK TRANSFERS	S -REF TO COM ON JUDIC	02-12-97	
S 92	BALLANCE	JUVENILE COURT CHANGES	S -REF TO COM ON JUDIC	02-12-97	
S 95	RAND	VALIDATE NOTARIAL ACTS	*R -CH. SL 97-0019	02-12-97	02-25-97
S 102	MCDANIEL	BOMB THREAT/FELONY	*S -RE-REF COM ON APPROPR	02-12-97	04-07-97
S 103	EAST	CONCEALED HANDGUN/LAW OFFICER	S -REF TO COM ON JUDIC	02-13-97	
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	05-15-97	05-20-97
S 115	GULLEY W	COMMUNITY PENALTIES/RECORD CHECKS	S -REF TO COM ON JUDIC	02-17-97	
S 116	GULLEY W	JURISDICTIONAL AMOUNT INCREASE	S -REF TO COM ON JUDIC	02-17-97	
S 117=	GULLEY W	MODIFY TWO DMV DEFINITIONS	S -REF TO COM ON JUDIC	02-17-97	
S 128=	ODOM	NO INS. POINTS/15 MPH OVER LIMIT	*S -RE-REF COM ON JUDIC	04-30-97	
S 132	ODOM	CLERKS/YEAR'S ALLOWANCE	*R -CH. SL 97-0310	02-17-97	04-17-97
S 135=	ODOM	CLARIFY SEX OFFENDER REGISTRATION	S -REF TO COM ON JUDIC	02-17-97	
S 143	RAND	BAN TOBACCO SALES TO MINORS	*R -CH. SL 97-0434	02-17-97	03-10-97
S 146	RAND	CLERKS OF COURT ON COMMISSIONS	S -REF TO COM ON JUDIC	02-17-97	
S 148=	WINNER	MOTOR VEHICLE OCCUPANT RESTRAINTS	S -REF TO COM ON JUDIC	02-17-97	
S 149=	COOPER	GRADUATED DRIVERS LICENSES	*S -RE-REF COM ON FINANCE	02-17-97	03-05-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	02-17-97	03-20-97
S 155	ODOM	ADMIN. RULES/SCOPE OF REVIEW	S -REF TO COM ON JUDIC	02-17-97	
S 156=	HARTSELL	AMEND MEDICAL PROVIDERS' LIENS	S -REF TO COM ON JUDIC	02-17-97	
S 159=	HARTSELL	COURTS SUPPLEMENT CLARK'S CALENDAR	S -REF TO COM ON JUDIC	02-17-97	
S 160=	HARTSELL	INCREASE MINIMUM UPSET AMOUNT	S -REF TO COM ON JUDIC	02-17-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 161=	HARTSELL	JUDICIAL TIMBER SALE/SEALED BID	S -REF TO COM ON JUDIC	02-17-97	
S 162=	HARTSELL	ADOPTION TECHINICAL AMENDMENTS	*R -CH. SL 97-0215	02-17-97	04-22-97
S 170	CARPENTER R	EQUINE ACTIVITY LIABILITY-2	S -REF TO COM ON JUDIC	02-18-97	
S 187=	KERR	APA TECHNICAL CHANGES	R -CH. SL 97-0034	02-19-97	03-11-97
S 202	BALLANTINE	GANG CRIME/ENHANCED PENALTIES	*S -RE-REF COM ON APPROPR	02-20-97	04-07-97
S 214=	LEDBETTER	BOMB THREAT/FELONY-2	S -REF TO COM ON JUDIC	02-20-97	
S 228=	WINNER	CHILD ABUSE REPORT PENALTY	*H -REF TO COM ON JUDICII	02-24-97	04-29-97
S 240	GULLEY W	LIMIT FUND-RAISING IN SESSION	*H -RE-REF COM ON ETHICS	02-25-97	04-17-97
S 247	RAND	REMOVE SUNSET/HLTH CONTRACT CONFID.	*R -CH. SL 97-0123	02-26-97	03-12-97
S 248	DALTON	BROUGHTON HOSPITAL SECURITY FORCE	*R -CH. SL 97-0320	02-26-97	04-03-97
S 250	WELLONS	CLARIFY PERFECTION-SECUR. INTEREST	*R -CH. SL 97-0386	02-26-97	04-14-97
S 251	WELLONS	CREATION OF EASEMENTS BY LANDOWNER	*R -CH. SL 97-0333	02-26-97	04-14-97
S 263	ODOM	WORKERS' COMP/NONRESIDENT ALIENS	*R -CH. SL 97-0301	02-27-97	04-28-97
S 264	HORTON	LIABILITY FOR JOB REFERENCES	*R -CH. SL 97-0478	02-27-97	04-17-97
S 264	HORTON	LIABILITY FOR JOB REFERENCES	*R -CH. SL 97-0478	07-23-97	08-14-97
S 267	KINCAID	LEGISLATIVE SESSION LENGTH	S -RE-REF COM ON SEL-LMT	02-27-97	04-22-97
S 279=	MILLER B	UNIFORM FRAUDULENT TRANSFER ACT	S -REF TO COM ON JUDIC	03-03-97	
S 281	ODOM	LEFT TURN ON RED	S -REF TO COM ON JUDIC	03-03-97	
S 285	WINNER	AMEND SHOPLIFTING LAW	*S -RE-REF COM ON APPROPR	03-03-97	04-14-97
S 296	ALBERTSON	CAMPAIGN PLEDGE	*S -RE-REF COM ON JUDIC	03-05-97	03-19-97
S 296	ALBERTSON	CAMPAIGN PLEDGE	*S -RE-REF COM ON JUDIC	03-20-97	
S 309=	MARTIN W	CHILD FATALITY TASK FORCE RECORDS	S -REF TO COM ON JUDIC	03-05-97	
S 311=	**MARTIN W**	**SMOKE DETECTOR PENALTIES**	***S -RE-REF COM ON APPROPR**	**03-05-97**	**04-30-97**
S 311=	**MARTIN W**	**SMOKE DETECTOR PENALTIES**	***S -RE-REF COM ON APPROPR**	**07-15-97**	**08-13-97**
S 313=	DANNELLY	PUBLIC ASSISTANCE FRAUD	S -REF TO COM ON JUDIC	03-05-97	
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	03-06-97	04-14-97
S 324	BALLANCE	CONCEALED HANDGUNS/LIABILITY	*S -RE-REF COM ON JUDIC	03-06-97	04-28-97
S 324	BALLANCE	CONCEALED HANDGUNS/LIABILITY	*S -RE-REF COM ON JUDIC	04-29-97	
S 325=	ODOM	CONCEALED HANDGUN EXEMPTION	*H -REF TO COM ON RULES	03-10-97	04-24-97
S 331=	REEVES	AGRICULTURE EMPLOYER APPEALS	S -REF TO COM ON JUDIC	03-10-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 348	WELLONS	WAIVE JURY TRIAL/CONST. AMEND	S -REF TO COM ON JUDIC	03-10-97	
S 349	SHAW R	HABITUAL IMPAIRED DRIVING	S -REF TO COM ON JUDIC	03-10-97	
S 353=	RAND	ADD NCCJETSC MEMBER	S -REF TO COM ON JUDIC	03-11-97	
S 359	ALBERTSON	INSANITY DEFENSE/COND. RELEASE	S -REF TO COM ON JUDIC	03-11-97	
S 360	ALBERTSON	BOAT NUMBER FEES	*H -RE-REF COM ON FINANCE	03-11-97	06-12-97
S 364	PAGE	1997 CHILD PROTECTION ACT	S -REF TO COM ON JUDIC	03-11-97	
S 368	ODOM	GOVERNOR'S D.W.I. INITIATIVE	S -REF TO COM ON JUDIC	03-11-97	
S 370	ODOM	COMMERCIAL ARBITRATION AMEND	*R -CH. SL 97-0141	03-11-97	04-01-97
S 371	ODOM	INTERNATIONAL COMM. CONCILIATION	*R -CH. SL 97-0368	03-11-97	04-30-97
S 372	ODOM	TIME LIMITS FOR FOREIGN SERVICE	*R -CH. SL 97-0469	03-11-97	04-30-97
S 373	ODOM	CONTRACTS AGAINST PUBLIC POLICY	S -REF TO COM ON JUDIC	03-11-97	
S 376	WARREN	CAMPUS LAW ENFORCEMENT	R -CH. SL 97-0194	03-12-97	04-22-97
S 377=	ALLRAN	UPPER CATAWBA/PERSONAL WATERCRAFT	S -REF TO COM ON JUDIC	03-12-97	
S 381	GULLEY W	N.C. CLEAN ELECTION ACT	*S -RE-REF COM ON APPROPR	03-12-97	06-04-97
S 384	DALTON	ROBBERY WITNESS STUDY	*S -RE-REF COM ON RULES &	03-13-97	08-11-97
S 386=	BALLANTINE	CLARIFY ATTY-IN-FACT GIFTS	S -REF TO COM ON JUDIC	03-13-97	
S 393	RAND	FAIL COMM. SERVICE/REVOKE LICENSE	*R -CH. SL 97-0234	03-17-97	03-26-97
S 394	RAND	MODIFY VICTIMS COMPENSATION ACT-2	S -REF TO COM ON JUDIC	03-17-97	
S 402	WEBSTER	DEBTOR PROTECTION/SIMPLE IRAS	H -REF TO COM ON JUDICI	03-17-97	04-22-97
S 403	BALLANCE	RESTORATION OF RIGHTS	S -REF TO COM ON JUDIC	03-17-97	
S 409	SHAW R	AIRPORT LAW ENFORCEMENT	*R -CH. SL 97-0143	03-18-97	04-30-97
S 430=	ODOM	INDUSTRIAL HYGIENISTS	*R -CH. SL 97-0195	03-19-97	04-28-97
S 440=	PLYLER	N.C. NATIONAL GUARD AUTHORITY	S -REF TO COM ON JUDIC	03-20-97	
S 444	HARTSELL	SIMPLIFY CRIMINAL DISCOVERY	S -REF TO COM ON JUDIC	03-20-97	
S 451=	BALLANCE	COMPENSATE ERRONEOUSLY CONVICTED	S -RE-REF COM ON JUDIC	03-24-97	04-24-97
S 451=	BALLANCE	COMPENSATE ERRONEOUSLY CONVICTED	S -RE-REF COM ON JUDIC	06-04-97	
S 452	COOPER	LOCAL REG. ADULT ENTERTAINMENT	*H -RE-REF COM ON FINANCE	03-24-97	04-09-97
S 456	REEVES	CARTWAYS SUNSET OFF	SF-FAILED 2ND READING	03-24-97	04-22-97
S 458=	SHAW R	AMEND MARIJUANA TRAFFICKING AMTS	S -REF TO COM ON JUDIC	03-24-97	
S 462	LEE	AMEND RESIDENCY FOR TUITION	S -REF TO COM ON JUDIC	03-24-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 498=	ODOM	WORKERS' COMP/PHYSICIAN SELECTION	S -REF TO COM ON JUDIC	03-25-97	
S 515	DALTON	PRELITIGATION INS. INFO./MEDIATION	H -REF TO COM ON INS	03-26-97	04-17-97
S 517	BALLANCE	CALENDARING CRIMINAL CASES	S -REF TO COM ON JUDIC	03-26-97	
S 530=	RAND	ROLLER SKATING RINK LIABILITY	S -REF TO COM ON JUDIC	03-27-97	
S 540=	MILLER B	STANDARDIZE LAW ENF. DISCIPLINE	S -REF TO COM ON JUDIC	03-27-97	
S 542	SHAW R	TAUNT POLICE ANIMAL	S -REF TO COM ON JUDIC	03-27-97	
S 551	COOPER	AMEND OFFER OF JUDGMENT RULE	S -REF TO COM ON JUDIC	03-27-97	
S 554	HARTSELL	PATERNITY/PARENTAL SUPPORT	R -CH. SL 97-0154	03-27-97	04-30-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	04-01-97	04-29-97
S 571	DALTON	CONTROLLED SUBSTANCE/SCHEDULE II	R -CH. SL 97-0385	04-01-97	04-22-97
S 572	GULLEY W	MODIFIED AT-LARGE ELECTION METHODS	S -REF TO COM ON JUDIC	04-01-97	
S 573=	GULLEY W	ELECTION LAW REFORM	*H -RE-REF COM ON ELE-LAW	04-01-97	04-30-97
S 610	MILLER B	INSURER DISCRI./ABUSED PERSONS	S -REF TO COM ON JUDIC	04-01-97	
S 627	MILLER B	DOMESTIC VIOLENCE CHANGES	*R -CH. SL 97-0471	04-01-97	04-16-97
S 628	MILLER B	DOMESTIC VIOLENCE MISDEMEANOR	S -REF TO COM ON JUDIC	04-01-97	
S 658	KERR	WORKERS' COMPENSATION FRAUD	S -REF TO COM ON JUDIC	04-02-97	
S 663	RUCHO	ABSENTEE VOTING CHANGES	*H -REF TO COM ON ELE-LAW	04-02-97	04-29-97
S 667=	REEVES	AMEND STALKING LAW	*R -CH. SL 97-0306	04-02-97	04-15-97
S 674	ODOM	SEX OFFENDER REGISTRY/PUBLIC INFO	S -REF TO COM ON JUDIC	04-02-97	
S 675	ODOM	STATEWIDE SEX OFFENDER REGISTRY	S -REF TO COM ON JUDIC	04-02-97	
S 676=	ODOM	SEX OFFENDER LAWS/FED. COMPLIANCE	*R -CH. SL 97-0516	04-02-97	05-20-97
S 691=	GULLEY W	OUTLAW DOG FIGHTS	S -REF TO COM ON JUDIC	04-03-97	
S 695	HARTSELL	IMMUNITY FOR PUBLIC SCH. VOLUNTEER	S -REF TO COM ON JUDIC	04-03-97	
S 708	COOPER	STAND BY YOUR AD	*H -REF TO COM ON ELE-LAW	04-07-97	04-22-97
S 716=	PERDUE	UNEMPL. BENEFITS/SEVERANCE PAY	S -REF TO COM ON JUDIC	04-07-97	
S 725	MILLER B	STATE EMPLOYEE INCENTIVE BONUS	*R -CH. SL 97-0513	04-07-97	04-29-97
S 741	DANNELLY	CHARLOTTE PHOTO ENFORCEMENT	*R -CH. SL 97-0216	04-07-97	04-28-97
S 744=	RAND	GRANDPARENTS' CHILD SUPPORT	H -RE-REF COM ON RULES	04-07-97	04-30-97
S 759	COOPER	GUILTY BUT MENTALLY ILL-2	S -REF TO COM ON JUDIC	04-08-97	
S 762	HORTON	INSANITY DEFENSE/BURDEN OF PROOF	S -REF TO COM ON JUDIC	04-08-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 763=	COOPER	CRIME VICTIMS RIGHTS ACT	S -REF TO COM ON JUDIC	04-08-97	
S 764=	KERR	WORKERS COMPENSATION MEDICAL CARE	*R -CH. SL 97-0308	04-09-97	04-29-97
S 782	CARRINGTON	CLONING OF HUMAN BEING POHIBITED	S -REF TO COM ON JUDIC	04-10-97	
S 786	MARTIN W	VOC. REHAB. SUBROGATION CHANGE	H -REF TO COM ON HR	04-10-97	04-24-97
S 791=	BALLANCE	OSHA WITNESS STATEMENTS	*H -REF TO COM ON COMM	04-10-97	04-29-97
S 793=	CONDER	OPTOMETRY CHANGES	S -RE-REF COM ON FINANCE	04-10-97	07-17-97
S 795	WINNER	PRODUCT LIABILITY LIMITATION	S -REF TO COM ON JUDIC	04-10-97	
S 799	COOPER	DISCIPLINE DISCLOSURE ACT	*H -REF TO COM ON PUBEMP	04-10-97	04-30-97
S 800	COOPER	JUDICIAL STDS. EXEC. SECRETARY	R -CH. SL 97-0072	04-10-97	04-24-97
S 810	WEBSTER	1997 PERSONAL PROTECTION ACT	S -REF TO COM ON JUDIC	04-10-97	
S 825	PAGE	CANDIDATE ACCOUNTABILITY	*H -REF TO COM ON ELE-LAW	04-14-97	04-30-97
S 827=	MILLER B	AMEND CIVIL PROCEDURE RULES	S -REF TO COM ON JUDIC	04-14-97	
S 834=	BALLANCE	COURT IMPROVEMENT ACT	S -RE-REF COM ON SEL-CRT	04-14-97	04-15-97
S 835=	BALLANCE	COURT IMPROVEMENT ACT/CONSTITUTION	S -RE-REF COM ON SEL-CRT	04-14-97	04-15-97
S 842	RAND	ARCHITECTURAL LICENSE EXEMPTION	*R -CH. SL 97-0457	04-15-97	04-24-97
S 844	HOYLE	STRENGTHEN OPEN GOVERNMENT	*R -CH. SL 97-0290	04-15-97	04-28-97
S 844	HOYLE	STRENGTHEN OPEN GOVERNMENT	*R -CH. SL 97-0290	04-29-97	05-01-97
S 853	**CONDER**	**REVENUE OFFICERS' POLICE POWERS**	***R -CH. SL 97-0503**	**04-15-97**	**06-17-97**
S 855=	BALLANCE	COURT INFORMATION REMOTE ACCESS	R -CH. SL 97-0199	04-15-97	04-29-97
S 862	LEE	UNC CONTRACTS NEGOTIATIONS	*R -CH. SL 97-0412	04-15-97	04-28-97
S 864	MCDANIEL	UPDATE AND REVISE TRADEMARK ACT	*R -CH. SL 97-0476	04-15-97	04-29-97
S 870	RAND	AMEND MARIJUANA TRAFFICKING AMTS-2	S -REF TO COM ON JUDIC	04-15-97	
S 877	LEDBETTER	SPEED TO ELUDE ARREST-2	S -REF TO COM ON JUDIC	04-15-97	
S 885	GULLEY W	NOTICE OF EXECUTION	*R -CH. SL 97-0289	04-15-97	04-30-97
S 893	WEINSTEIN	REGULATING CHARITABLE BINGO	S -REF TO COM ON JUDIC	04-16-97	
S 896	RAND	LEGAL REPRESENTATION/CORPORATIONS	*R -CH. SL 97-0203	04-16-97	04-29-97
S 897	RAND	AMEND ELEC. SURVEILLANCE LAW	*R -CH. SL 97-0435	04-16-97	04-29-97
S 902=	RAND	SUPREME COURT SESSIONS	S -REF TO COM ON JUDIC	04-16-97	
S 904	HOYLE	IMPLEMENT SESSION LIMITS	H -REF TO COM ON ELE-LAW	04-16-97	04-22-97
S 905	HOYLE	SESSION LENGTH LIMITS	*H -REF TO COM ON RULES	04-16-97	04-22-97

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 907	LEDBETTER	MSD AMENDMENTS	S -REF TO COM ON JUDIC	04-17-97	
S 909	DALTON	BREAK & ENTER/STEAL GUN	S -REF TO COM ON JUDIC	04-17-97	
S 910	DALTON	LIMITATIONS FOR OFFICIAL BONDS	*R -CH. SL 97-0297	04-17-97	04-23-97
S 920	ODOM	ENHANCED SENTENCE/FIREARM FELONIES	S -REF TO COM ON JUDIC	04-17-97	
S 922	ODOM	AMEND HABITUAL FELON LAW	S -REF TO COM ON JUDIC	04-17-97	
S 923	ODOM	COMM. REALTOR LIEN STUDY	*S -RE-REF COM ON RULES &	04-17-97	07-31-97
S 927	COOPER	POSITIVE CAMPAIGNS	S -REF TO COM ON JUDIC	04-17-97	
S 935	PERDUE	MANAGED CARE/UTILIZ. & GRIEVANCE	*H -REF TO COM ON RULES	04-17-97	06-03-97
S 943	RAND	MEDICAID FALSE CLAIMS ACT	*R -CH. SL 97-0338	04-17-97	04-28-97
S 948	GULLEY W	MULTIPLE COMMISSIONS/CAMPUS POLICE	S -REF TO COM ON JUDIC	04-17-97	
S 950	GULLEY W	JUVENILE HEARING OFFICERS	S -RE-REF COM ON RULES &	04-17-97	05-06-97
S 951	GULLEY W	ABSENTEE TECHNICAL AMENDMENTS	S -REF TO COM ON JUDIC	04-17-97	
S 952	GULLEY W	ELECTION CYCLE CONTRIBUTION LIMIT	S -REF TO COM ON JUDIC	04-17-97	
S 957=	HOYLE	ENVIRONMENTAL AUDITS	S -REF TO COM ON JUDIC	04-17-97	
S 961	ALLRAN	CHILD BICYCLE SAFETY ACT	S -REF TO COM ON JUDIC	04-17-97	
S 970	REEVES	INFRACTION/LOCAL ORDINANCE	S -REF TO COM ON JUDIC	04-21-97	
S 982=	JENKINS	HOUSING AUTHORITY AMENDMENTS	S -REF TO COM ON JUDIC	04-21-97	
S 991	MCDANIEL	CONCEALED HANDGUN AMENDMENTS	S -REF TO COM ON JUDIC	04-21-97	
S 997	PLYLER	IGNORE EMERGENCY WARNING	*R -CH. SL 97-0232	04-21-97	04-30-97
S 998	PLYLER	FRAUD/"PRETEND" CRIME VICTIM	H -REF TO COM ON JUDICII	04-21-97	04-30-97
S 999	LEDBETTER	LAND SURVEYORS ENTRY ON LAND	S -REF TO COM ON JUDIC	04-21-97	
S1005=	GULLEY W	HEALTH CARE INFORMATION PRIVACY	S -RE-REF COM ON RULES &	04-21-97	05-06-97
S1012=	RUCHO	PUBLICATION OF APPELLATE DECISIONS	S -RE-REF COM ON FINANCE	04-21-97	04-30-97
S1014	COOPER	JUDICIAL SELECTION	S -REF TO COM ON JUDIC	04-21-97	
S1021	KINNAIRD	DISPUTE RESOLUTION COMMISSION	S -REF TO COM ON JUDIC	04-21-97	
S1024=	**COOPER**	**SHERIFFS' COMM'N AMENDMENTS**	**S -RE-REF COM ON ST GVT**	**04-21-97**	**04-28-97**
S1026	BLUST	OPEN RECORDS/IDENTITY OF JUVENILES	S -REF TO COM ON JUDIC	04-21-97	
S1028	MILLER B	SUBCONTRACTOR CLAIMS AGAINST OWNERS	H -REF TO COM ON RULES	04-21-97	04-28-97
S1033	WEBSTER	REWARD ABILITY AT WORK AND SCHOOL	S -REF TO COM ON JUDIC	04-21-97	
S1034	MILLER B	NO REPORT/NEW ELECTION	S -REF TO COM ON JUDIC	04-21-97	

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: JUDICIARY — Valid Through 7-OCT-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1040	MILLER B	NONCOLLISION MV ACCIDENTS	S -REF TO COM ON JUDIC	04-21-97	
S1045	WELLONS	EXPEDITE JURY SELECTION	S -REF TO COM ON JUDIC	04-21-97	
S1046	WELLONS	REDUCE PEREMPTORY CHALLENGES	S -REF TO COM ON JUDIC	04-21-97	
S1048=	HARTSELL	CON MODIFICATIONS	S -REF TO COM ON JUDIC	04-21-97	
S1049	KINNAIRD	CAMPUS SATELLITE POLLING PLACES	H -REF TO COM ON RULES	04-21-97	04-28-97
S1050	KINNAIRD	SEXUAL PRIVACY AT HOME	S -REF TO COM ON JUDIC	04-21-97	
S1055	COOPER	PUBLIC HOSPITAL PERSONNEL ACT	*R -CH. SL 97-0517	04-21-97	04-22-97
S1055	COOPER	PUBLIC HOSPITAL PERSONNEL ACT	*R -CH. SL 97-0517	07-15-97	08-28-97
S1057	BALLANTINE	HURRICANE RELIEF/BEACH HOMEOWNERS	S -REF TO COM ON JUDIC	04-21-97	
S1060	LEE	PUBLIC RECORDS/MEETINGS LAW AMENDS	S -REF TO COM ON JUDIC	04-21-97	
S1061	BALLANTINE	HONESTY IN EVIDENCE	S -REF TO COM ON JUDIC	04-21-97	
S1068=	JENKINS	HOUSING AUTHORITY AMENDMENTS	S -RE-REF COM ON ST GVT	04-21-97	04-29-97
S1077	DALTON	AMEND BURGLARY	S -REF TO COM ON JUDIC	04-21-97	

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.

INDEX

BILL NUMBER		SHORT TITLE	DATE HEARD
SB	1	Campaign Reform Act	2/4/97
SB	2	Change Primary Date (1)	2/25/97
SB	2	Change Primary Date (1)	2/27/97
SB	3	Lobbyist Waiting List	2/13/97
SB	3	Lobbyist Waiting List	2/18/97
SB	7	Increase Drug Penalties	4/3/97
SB	9	Embezzlement/Increase Penalty	2/18/97
SB	9	Embezzlement/Increase Penalty	4/3/97
SB	10	Accessory After the Fact/Penalty	4/3/97
SB	11	Voluntary Manslaughter/Class D Felony	4/3/97
SB	12	Habitual DWI/Active Time	2/11/97
SB	14	Reclassify Prison Offenses	4/3/97
SB	15	Aggravating Factor/Injure Official	2/11/97
SB	16	Clarify Community-Based Corrections	3/18/97
SB	16	Clarify Community-Based Corrections	3/20/97
SB	27	Veto Procedural Changes	2/6/97
SB	29	Increase Penalty/Pyramid Schemes	4/3/97
SB	39	Modify Setoff Debt Collection	3/27/97
HB	61	GS 106 Obsolete Laws	5/8/97
HB	66	Trespass/Theft of Pine Straw	4/3/97

SB	75	Trespass/Theft of Pine Straw	4/3/97
SB	79	Repeal More Antiquated Laws	2/25/97
SB	86	Fast Track Technical Amendments	2/18/97
SB	95	Validate Notarial Acts	2/25/97
SB	102	Bomb Threat/Felony	4/3/97
HB	115	1997 Technical Corrections	8/19/97
SB	117	Modify Two DMV Definitions	4/10/97
SB	132	Clerks/Year's Allowance	4/17/97
HB	139	Clarify Sex Offender Regist.	3/20/97
HB	141	Embezzlement/Increase Penalty	4/3/97
HB	142	Accessory After the Fact/Penalty	4/3/97
SB	143	Ban Tobacco Sales to Minors	3/4/97
SB	143	Ban Tobacco Sales to Minors	3/6/97
HB	144	Vol. Manslaughter/Class D Felony	4/3/97
SB	146	Clerks of Court on Commissions	4/24/97
HB	147	Outlaw Dog Fights	5/6/97
SB	148	Motor Vehicle Occupant Restraints	3/27/97
SB	149	Graduated Drivers Licenses	2/27/97
SB	149	Graduated Drivers Licenses	3/4/97
SB	152	Service of Administrative Search Warrants	3/20/97
HB	158	Prison Offenses/Increase Penalty	4/3/97
HB	159	Prison Escape Penalties	4/3/97
SB	162	Adoption Technical Amendments	4/17/97

HB	174	Active Sentence/Trial Waiting Time	5/13/97
HB	175	Structured Sentencing/Technical Amendments	5/13/97
HB	176	Equine Activities/Duties and Liability	6/24/97
HB	176	Equine Activities/Duties and Liability	7/10/97
HB	176	Equine Activities/Skating Rink Liability	7/15/97
HB	183	DWI/Felony Prior Record Level	7/24/97
HB	184	Exempt State Health Plan from APA	6/24/97
SB	187	APA Technical Changes	3/11/97
HB	191	Certified Copies/Custody & Wills	5/13/97
HB	192	Courts Commission Membership	5/13/97
HB	195	Clarify Post-Release Supervision	6/10/97
HB	197	Judicial Timber Sale/Sealed Bid	5/6/97
HB	202	Increase Minimum Upset Amount	3/18/97
SB	202	Gang Crime/Enhanced Penalties	4/3/97
HB	203	Courts Supplement Clerk's Calendar	5/6/97
HB	221	Initial Appearance by Video	6/10/97
HB	221	Initial Appearance by Video	6/12/97
SB	228	Child Abuse Report Penalty	3/20/97
SB	228	Child Abuse Report Penalty	4/24/97
SB	228	Child Abuse Report Penalty	4/29/97
SB	240	Limit Fundraising in Session	4/17/97
SB	247	Remove Sunset/Health Contract Confidentiality	3/11/97

SB	248	Broughton Hospital Security Force	4/3/97
SB	250	Clarify Perfection-Security Interest	4/10/97
SB	251	Creation of Easements by Landowner	4/10/97
SB	263	Workers' Comp./Nonresident Aliens	4/24/97
SB	264	Liability for Job References	4/17/97
HB	267	Bomb Threat/Felony - 2	4/3/97
SB	285	Amend Shoplifting Law	4/10/97
SB	296	Campaign Pledge	3/18/97
HB	301	Child Support/Fed. Regulations	7/29/97
HB	301	Child Support/Fed. Regulations	8/7/97
SB	311	Smoke Detector Penalties	8/11/97
SB	320	Nurses' Training	4/10/97
SB	324	Concealed Handguns/Liability	4/24/97
SB	325	Concealed Handgun Exemption	4/24/97
HB	336	Victim's Family Witness Execution	5/6/97
HB	354	Eliminate Certified Notice	5/20/97
SB	360	Boat Number Fees	6/12/97
SB	368	Governor's DWI Initiative	4/1/97
SB	370	Commercial Arbitration Amends	3/25/97
SB	371	International Comm. Conciliation	3/25/97
SB	371	International Comm. Conciliation	4/29/97
SB	372	Time Limits for Foreign Service	3/25/97
SB	372	Time Limits for Foreign Service	4/29/97

SB	373	Contracts Against Public Policy	3/25/97
HB	374	Modify Victims Comp. Act	5/6/97
SB	376	Campus Law Enforcement	4/22/97
SB	381	N. C. Clean Election Act	4/8/97
SB	381	N. C. Clean Election Act	6/3/97
SB	384	Robbery Witness Study	4/24/97
SB	384	Robbery Witness Study	8/11/97
SB	393	Fail Community Service/Revoke Lic.	3/25/97
SB	402	Debtor Protection/Simple IRA's	4/22/97
HB	402	Expunge Infractions	5/20/97
SB	403	Restoration of Rights	4/22/97
SB	409	Airport Law Enforcement	4/30/97
SB	430	Industrial Hygienists	4/17/97
SB	430	Industrial Hygienists	4/24/97
HB	431	Public Assistance Fraud	6/26/97
HB	431	Public Assistance Fraud	7/1/97
HB	443	Concealed Handgun	6/12/97
HB	448	Governor's DWI Initiatives	5/13/97
HB	448	Governor's DWI Initiatives	5/22/97
SB	451	Compensate Erroneously Convicted	4/24/97
SB	452	Local Regulation Adult Entertainment	4/3/97
SB	452	Local Regulation Adult Entertainment	4/8/97
SB	456	Cartways Sunset Off	4/22/97

SB	462	Amend Residency for Tuition	4/30/97
HB	465	Vol. Dismissal/Notify Defendant	5/20/97
HB	477	CPA Exam and Records	5/27/97
SB	515	Prelitigation Insurance Information/ Mediation	4/17/97
HB	523	Confiscated Gun/Law Officer Use	5/20/97
HB	523	Confiscated Gun/Law Officer use	7/10/97
HB	527	Optometry Changes	5/15/97
HB	530	Professional Corporation Act Amend.	6/10/97
HB	533	Equitable Distribution/Divisible Property	6/10/97
HB	535	Equitable Distribution/Retirement Rights	6/10/97
SB	540	Standardize Law Enf. Discipline	4/29/97
SB	554	Paternity/Parental Support	4/30/97
SB	561	Co. Police/Concealed Handguns	4/29/97
SB	571	Controlled Substance/Schedule II	4/22/97
SB	573	Ballot Access Changes	4/30/97
HB	584	Attempting to Elude Arrest	7/24/97
HB	584	Attempting to Elude Arrest	8/11/97
HB	597	Municipal Lease/Venture	5/27/97
HB	597	Municipal Lease/Venture	6/5/97
HB	611	Increase Compensation for Erroneous Convictions	6/5/97
HB	615	Public Defender/District 16B	5/27/97
HB	618	Workers' Compensation Fraud	7/3/97

SB	627	Domestic Violence Changes	4/15/97
HB	646	Revise UCC/Crop Liens	6/10/97
HB	652	Technical Amendments/Auditor	8/7/97
SB	663	Absentee Voting Changes	4/29/97
SB	667	Amend Stalking Law	4/15/97
SB	676	Sex Offender Registration	5/8/97
SB	676	Sex Offender Registration	5/13/97
SB	708	Stand by Your Ad	4/22/97
SB	741	Charlotte Photo Enforcement	4/24/97
SB	744	Grandparents' Child Support	4/30/97
SB	759	Guilty But Mentally Ill-2	4/22/97
SB	764	Workers Comp. Medical Care	4/29/97
HB	770	Amend Marijuana Trafficking Amounts	7/3/97
SB	786	Vocational Rehabilitation Sub-Change	4/24/97
SB	799	Discipline Disclosure Act	4/29/97
SB	799	Discipline Disclosure Act	4/30/97
SB	800	Judicial Standards Executive Secretary	4/24/97
HB	810	Nash Room Tax	6/17/97
SB	825	Candidate Accountability	4/29/97
SB	825	Candidate Accountability	4/30/97
SB	842	Architectural License Exemption	4/24/97
SB	844	Strengthen Open Government	4/24/97

SB	853	Revenue Officers' Police Powers	6/17/97
HB	853	Professional Corporation Act	7/3/97
SB	855	Court Information Remote Access	4/29/97
SB	862	UNC Contracts Negotiations	4/24/97
SB	864	Update & Revise Trademark Act	4/29/97
SB	893	Regulating Charitable Bingo	5/8/97
SB	893	Regulating Charitable Bingo (Public Hearing)	5/20/97
SB	893	Regulating Charitable Bingo	6/17/97
SB	893	Regulating Charitable Bingo	6/19/97
SB	896	Legal Representation/Corps.	4/29/97
SB	897	Amend Electronic Surveillance Law	4/29/97
HB	898	Public Records Law Amendments	8/19/97
HB	907	Mediated Settlement/Family Issues	5/27/97
HB	908	Modify Rights of Decedent's Spouse	7/1/97
HB	915	Firefighters/No Conflict	6/3/97
HB	915	Firefighters/No Conflict	7/1/97
SB	923	Commercial Realtor Lien Act	4/30/97
SB	923	Commercial Realtor Lien Act	6/5/97
SB	923	Commercial Realtor Lien Act	7/29/97
HB	954	Supreme Court Sessions	5/6/97
HB	958	Concealed Handgun Laws Amend.	5/22/97
HB	958	Concealed Handgun Laws Amend.	5/29/97

HB 977	Notary Commission Amendment	6/19/97
SB 997	Ignore Emergency Warning	4/30/97
SB 998	Fraud/"Pretend" Crime Victim	4/30/97
HB 1008	Chiropractic Licensure Amend.	5/29/97
HB 1012	Shooting Range Protection	7/15/97
HB 1012	Shooting Range Protection	7/24/97
HB 1012	Shooting Range Protection	8/11/97
HB 1023	Pretrial Release/Bond Forfeiture	7/10/97
HB 1023	Pretrial Release/Bond Forfeiture	7/15/97
HB 1064	Housing Authority Amendments	7/3/97
HB 1087	Motorized Vehicle Trespass	8/7/97
HB 1091	Criminal Record Ck. by Private Bus.	5/29/97
HB 1094	Repeal/Recodify Railroad Laws	6/26/97
HB 1122	Admit Drug/Optom. Evidence/Court Site	7/3/97
HB 1124	Fire/Rescue Personnel Records Chks	5/29/97
HB 1132	Date Rape Drugs	8/7/97
HB 1140	Littering/Require Community Service	5/29/97
HB 1140	Littering/Require Community Service	6/3/97

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 4, 1997

The Senate Judiciary Committee met on February 4, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. All members were present.

Senator Cooper, Chairman, called the meeting to order and welcomed the members of the Committee and thanked them for their willingness to serve.

Senator Cooper explained that because of the size of the Committee and the fact that there would be only one Senate Judiciary Committee this session, it would be necessary to appoint subcommittees to look at legislation from time to time. These will be announced when necessary.

Senator Wib Gulley was recognized to explain **Senate Bill 1** - A ACT TO REFORM THE CAMPAIGN LAWS OF NORTH CAROLINA.

This bill would:

1. Lower the contribution limit
2. Close the soft money loophole
3. Close the family loophole
4. Close the second primary loophole
5. Provide for electronic filing and access for statewide legislative elections
6. Provide for quarterly filing during an election year
7. Require identification of donor's occupation
8. Require reporting in local elections and referenda
9. Clarify/expand the limitation on fundraising during session

Warren Murphy, with the North Carolina Alliance for Democracy, and Sam Brown, with Common Cause of North Carolina, spoke on the bill. (Information is attached to the minutes.)

Yvonne Sullivan, with the State Board of Elections, was recognized to respond to questions from the Committee.

Senator Rand moved to amend the bill on Page 1, Line 17 by adding "candidates spouse". The motion carried by voice vote.

Senator Winner moved to give the bill a favorable report as amended.

Senator Kincaid moved to amend the bill on Page 2, Line 23 by deleting lines 23-38.

Senator Ballance offered a substitute motion to change the date this section would become effective from 1998 to 2000. The motion failed on a tie vote.

Senator Kincaid's motion was voted on and failed by a show-of-hands vote.

Senator Winner's motion to give the bill a favorable report as amended carried by voice vote.

There being no further business, the meeting adjourned at 11:20 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 4, 1997

AGENDA

SB 1	Campaign Reform Act of 1997	Gulley

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

Terrence D.
Research Di
Suite 545, L
300 N. Salis
Raleigh, NC
(919) 733-25

February 4, 1997

TO: Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Senate Bill 1 – Campaign Reform Act of 1997.

Senate Bill 1, introduced by Senator Gulley, would make nine changes to the campaign finance laws, as follows:

1. Lower the Contribution Limit. – Currently, the contribution limit is $4,000 per donor per donee per election. **The bill would lower the limit to $2,000. Effective January 1, 1998.**

2. Close Soft Money Loophole. -- Currently, political party executive committees are exempt from the contribution limit on both ends: They may receive contributions without limit, and they may give contributions without limit. **The bill would remove the exemption at both ends and treat party committees like other political committees with respect to contribution limits. Effective Jan. 1, 1998.**

3. Close Family Loophole. – Currently, members of a candidate's immediate family (spouse, parents, brothers, sisters) may contribute to the candidate without limit. **The bill would remove the exemption and treat family members like other individuals with respect to contribution limits. Effective Jan. 1, 1998.**

4. Close Second-Primary Loophole. – Currently, an "election" for purposes of the $4,000 contribution limit is a first primary, a second primary, or a general election. The State Board of Elections has ruled that the law means a candidate may receive an extra $4,000 from a contributor for a second primary even if the candidate is not on the ballot in a second primary. **The bill would clarify that a second primary triggers an extra $2,000 (see Item 1) in contributions only if the candidate is on the ballot in a second primary. Eff. Jan. 1, 1998.**

5. Electronic Filing and Access: Statewide and Legislative Elections. – Currently, campaign treasurers are not required to file campaign-finance reports electronically. The State Board of Elections has sought to encourage electronic filing by giving treasurers a disk showing them the format it uses. The Board says electronic filing enables it to make the campaign data accessible to the public much more quickly. But few campaigns have chosen to file electronically. **The bill would require electronic filing for all statewide and legislative**

campaigns by 1998. It would also require the State Board of Elections to provide public access on the Internet for all campaign finance reports as soon as feasible

6. Quarterly Filing During Election Year. -- Currently, the schedule of reporting during an election year is: One report 10 days after filing candidacy or forming a committee, one report 10 days before the primary, one report 10 days before the general election, and an annual report. A candidate defeated in a primary must file a report 30 days after that defeat. During an off-year, only an annual report is required. **The bill would replace the current schedule of campaign reports with a system of quarterly reports during every even-numbered year and semi-annual reports every odd-numbered year. To prevent the quarterly schedule from being *less* informative to the public than the current schedule, the bill makes the third quarterly report due 10 days before the general election and requires that it must cover the period up to 17 days before the election. The new schedule would begin in 1998. (The bill also requires the State Board of Elections to study the feasibility of monthly reports during an election year, with weekly reports during the month before an election.)**

7. Donor's Occupation. -- Currently, a campaign treasurer must identify on the campaign finance report the name and address of every contributor who gave over $100 per election. Under the law governing federal elections, and in the law of 27 states, the treasurer must also report the donor's occupation. **The bill would add donor's occupation to North Carolina's reporting requirement. It would leave in place the $100 threshold on identifying contributors. Effective in 1998.**

8. Reporting in Local Elections and Referenda. – Currently, there is an exemption from campaign-finance reporting for all candidates for county and municipal offices in any county or city with a population of less than 50,000. Candidates in those smaller local elections already are subject to contribution limits and other campaign-finance regulations. But they are exempted from reporting, no matter how much money they receive or spend. In local referenda, no reporting is required, no matter the size of the locality. **The bill would change the population threshold for campaign -finance reports in local government elections from 50,000 to 10,000. It would require candidates in local elections in cities and counties over 10,000 to report. (The bill would leave unchanged a current exemption from reporting by any kind of candidate or political party committee if no financial activity in the campaign exceeds $1,000.) The bill would also require reporting in referenda of cities and counties, regardless of population. Applies to elections beginning in 1998.**

9. Clarify/Expand the Limitation on Fundraising During Session. – Currently, legislators and Council of State members are prohibited from accepting contributions made by "or at the behest or recommendation of" a registered lobbyist during the long session of the General Assembly. The law exempts from that prohibition any "political committee that operates on a statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly." **The bill would clarify who is a prohibited donor by specifying that legislators or Council of State members may not receive contributions during the long session from lobbyists or from any political committees that have lobbyists or whose parent entities have lobbyists. And the bill would change who is a prohibited donee by removing the exemption for gifts to the statewide party committees designed to help legislative or Council of State candidates. Effective Jan. 1, 1999.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1

Short Title: Campaign Reform Act of 1997. (Public)

Sponsors: Senators Gulley; Albertson, Ballance, Cooper, Dalton, Dannelly, Hoyle, Jenkins, Jordan, Kerr, Kinnaird, Lee, Lucas, Miller, Odom, Perdue, Phillips, Plyler, Rand, Reeves, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REFORM THE CAMPAIGN LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

--LOWER THE CONTRIBUTION LIMIT AND CLOSE THE LOOPHOLES FOR PARTY CONTRIBUTIONS, FAMILY CONTRIBUTIONS, AND SECOND PRIMARIES.

Section 1. (a) G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate ~~or a candidate's spouse, parents, brothers and sisters~~ to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

--ELECTRONIC FILING AND PUBLIC ACCESS ON THE INTERNET.

Section 2. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall file the reports required by this section electronically, according to rules which shall be promulgated by the State Board of Elections:

(1) Candidates for statewide office or the General Assembly;

(2) The executive committees of political parties;

(3) Political committees that make contributions to candidates for statewide office or the General Assembly or make independent expenditures that affect contests for statewide office or the General Assembly."

(b) The State Board of Elections shall provide access to the public of campaign finance reports over the Internet as soon as technically feasible.

(c) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--QUARTERLY AND SEMI-ANNUAL REPORTING.

Section 3. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization

required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

~~(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.~~

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report with the Board not later than seven days after the end of each calendar quarter, covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semi-annual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) The State Board of Elections shall study the feasibility of requiring monthly reporting by campaign treasurers during even-numbered years, with weekly reports required during the month before each primary and election. The State Board shall report in writing to the General Assembly by March 1, 1998.

(c) Subsection (a) of this section becomes effective January 1, 1998, and applies to all financial activity occurring on or after that date. Subsection (b) of this section is effective when it becomes law.

--DONOR'S OCCUPATION.

Section 4. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board."

(b) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

--REPORTING IN LOCAL ELECTIONS.

Section 5. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than ~~50,000~~ 10,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or village with a population of ~~50,000~~ 10,000 or over, according to the most recent decennial federal census."

(e) This section becomes effective January 1, 1998, and applies to elections beginning in 1998.

--FUND-RAISING IN SESSION.

Section 6. (a) G.S. 163-278.13A reads as rewritten:

"§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General ~~Statutes:~~ Statutes or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of the Council of State; or

(2) A member of the General Assembly; or

(3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes and no political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or

(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or

(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the

Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns sine die; or

(2) Recesses or adjourns for more than 10 days."

(b) This section becomes effective January 1, 1999.

Section 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1
Proposed Committee Substitute S1-PCS1523-RR001

Short Title: Campaign Reform Act of 1997. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REFORM THE CAMPAIGN LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

--LOWER THE CONTRIBUTION LIMIT AND CLOSE THE LOOPHOLES FOR PARTY CONTRIBUTIONS, FAMILY CONTRIBUTIONS, AND SECOND PRIMARIES.

Section 1. (a) G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's ~~spouse, parents, brothers and sisters~~ spouse to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a

second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

--ELECTRONIC FILING AND PUBLIC ACCESS ON THE INTERNET.

Section 2. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall file the reports required by this section electronically, according to rules which shall be promulgated by the State Board of Elections:

(1) Candidates for statewide office or the General Assembly;

(2) The executive committees of political parties;

(3) Political committees that make contributions to candidates for statewide office or the General Assembly or make independent expenditures that affect contests for statewide office or the General Assembly."

(b) The State Board of Elections shall provide access to the public of campaign finance reports over the Internet as soon as technically feasible.

(c) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--QUARTERLY AND SEMIANNUAL REPORTING.

Section 3. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of

the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

~~(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.~~

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report with the Board not later than seven days after the end of each calendar quarter, covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semiannual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) The State Board of Elections shall study the feasibility of requiring monthly reporting by campaign treasurers during even-numbered years, with weekly reports required during the month before each primary and election. The State Board shall report in writing to the General Assembly by March 1, 1998.

(c) Subsection (a) of this section becomes effective January 1, 1998, and applies to all financial activity occurring on or after that date. Subsection (b) of this section is effective when it becomes law.

--DONOR'S OCCUPATION.

Section 4. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board."

(b) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

--REPORTING IN LOCAL ELECTIONS.

Section 5. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than ~~50,000~~ 10,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or village with a population of ~~50,000~~ 10,000 or over, according to the most recent decennial federal census."

(e) This section becomes effective January 1, 1998, and applies to elections beginning in 1998.

--FUND-RAISING IN SESSION.

Section 6. (a) G.S. 163-278.13A reads as rewritten:

"**§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.**

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General ~~Statutes:~~ Statutes or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of the Council of State; or

(2) A member of the General Assembly; or

(3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes and no political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or

(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or

(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the

apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns sine die; or

(2) Recesses or adjourns for more than 10 days."

(b) This section becomes effective January 1, 1999.

Section 7. This act is effective when it becomes law.

FILED - SENATE

JAN 2 9 1997

PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA 1997

SESSION 1997

S D

SENATE DRS1504-RR021A(1.23)

Short Title: Campaign Reform Act of 1997. (Public)

Sponsors: Senator Gulley.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REFORM THE CAMPAIGN LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

--LOWER THE CONTRIBUTION LIMIT AND CLOSE THE LOOPHOLES FOR PARTY CONTRIBUTIONS, FAMILY CONTRIBUTIONS, AND SECOND PRIMARIES.

Section 1. (a) G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate ~~or a candidate's spouse, parents, brothers and sisters~~ to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~four~~ two thousand dollars ~~($4,000)~~ ($2,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the ~~election.~~ election, except that where a candidate is not on the ballot in a

second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall ~~not~~ apply to ~~any~~ national, State, ~~district or county~~ district, county, precinct, or other executive ~~committee~~ committees of any political party. The limitation in this section on contributions to or from political party executive committees shall apply collectively to all executive committees of the same political party nationally or within the State. ~~For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.~~ Contributions by political party executive committees under G.S. 163-278.42 are subject to the limitations of this section.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a Class 2 misdemeanor."

(b) This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.

--ELECTRONIC FILING AND PUBLIC ACCESS ON THE INTERNET.

Section 2. (a) G.S. 163-278.9 is amended by adding a new subsection to read:

"(j) Treasurers for the following entities shall file the reports required by this section electronically, according to rules which shall be promulgated by the State Board of Elections:

(1) Candidates for statewide office or the General Assembly;
(2) The executive committees of political parties;
(3) Political committees that make contributions to candidates for statewide office or the General Assembly or make independent expenditures that affect contests for statewide office or the General Assembly."

(b) The State Board of Elections shall provide access to the public of campaign finance reports over the Internet as soon as technically feasible.

(c) This section becomes effective January 1, 1998, and applies to all reports due on or after that date.

--QUARTERLY AND SEMI-ANNUAL REPORTING.

Section 3. (a) G.S. 163-278.9(a) reads as rewritten:

"(a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of

the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

~~(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.~~

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report with the Board not later than seven days after the end of each calendar quarter, covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semi-annual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

(b) The State Board of Elections shall study the feasibility of requiring monthly reporting by campaign treasurers during even-numbered years, with weekly reports required during the month before each primary and election. The State Board shall report in writing to the General Assembly by March 1, 1998.

(c) Subsection (a) of this section becomes effective January 1, 1998, and applies to all financial activity occurring on or after that date. Subsection (b) of this section is effective when it becomes law.

--DONOR'S OCCUPATION.

Section 4. (a) G.S. 163-278.11(a)(1) reads as rewritten:

"(1) Contributions. -- A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the occupation of the donor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board."

(b) This section becomes effective February 1, 1998, and applies to all reports due on or after that date.

--REPORTING IN LOCAL ELECTIONS.

Section 5. (a) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide ~~referenda.~~ referenda and the county or municipal board of elections conducting all local referenda."

(b) G.S. 163-278.6(18) reads as rewritten:

"(18) The term 'public office' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than ~~50,000~~ 10,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices."

(c) G.S. 163-278.6(18a) reads as rewritten:

"(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General ~~Assembly~~ Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' ~~does not include~~ includes any type of municipal, county, or special district referendum."

(d) G.S. 163-278.40(2) reads as rewritten:

"(2) The term 'city' means any incorporated city, town, or village with a population of ~~50,000~~ 10,000 or over, according to the most recent decennial federal census."

(e) This section becomes effective January 1, 1998, and applies to elections beginning in 1998.

--FUND-RAISING IN SESSION.

Section 6. (a) G.S. 163-278.13A reads as rewritten:

"**§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.**

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General ~~Statutes:~~ Statutes or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of the Council of State; or

(2) A member of the General Assembly; or

(3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes and no political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or

~~(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or~~

(3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or

(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or

(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution

unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns sine die; or

(2) Recesses or adjourns for more than 10 days."

(b) This section becomes effective January 1, 1999.

Section 7. 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 2-4-97

S. B. No. 1 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) BALLANCE

1 moves to amend the bill on page 2, line 37
2 ( ) WHICH CHANGES THE TITLE
3 by DELETE DATE "1998," AND SUBSTITUTE
4 "2000,".
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Ballance

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 2-4-97

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 23

( ) WHICH CHANGES THE TITLE

by Delete lines 23 thru 35.

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Rand
Sen.)

1 moves to amend the bill on page 1, line 17

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 ~~[illegible]~~

5 removing the strikethrough from

6

7 the term "or a ~~[illegible]~~

8

9 spouse"

10

11

12

13

14

15

16

17

18

19

SIGNED Tim Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, February 05, 1997

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

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

S.B. **1** Campaign Reform Act of 1997

Draft Number:	S1-PCS1523-RR001
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

REVISED REPORT

Common Cause/North Carolina

Post Office Box 482
Raleigh, North Carolina 27602

SENATE JUDICIARY COMMITTEE HEARING — February 4, 1997
Legislative Building · Room 1027 — 10:00 A.M

Since we know a good system of public financing for fair elections is easily possible, and since we know it would cost only about two tenths of one percent (.2% = .002) of the General Funds Budget, it is hard for me to understand the grudging tidbits of reform that are being considered. This Senate Bill I is very inadequate for what is needed. The "North Carolina Clean Elections Act" offered by Sen. Wib Gulley is what we need, perhaps combined with Lt. Gov. Dennis Wicker's "Positive Campaign" bill. So, why don't we just do it?

I suspect the answer is that tremendous special interest opposition is coming into play on the back channels. Who knows, maybe millions of dollars are in the pipeline for the defenders of the present system. A system manageable for big lobbyists and vested interests which they want to keep. This reluctant, one inch at a time giving way can hold on for another 4, 8, or even 12 years.

It amazes me that most of the status-quo spokesmen claim they don't hear any clamor from their constituents. But in one public poll after another, 60% to 80% of the respondents say big money must be removed from campaign financing.

It seems to me that an honest public official would be glad to be relieved from the money raising business in order to put time into studying the bills, researching the facts, consulting the constituents, voting in a statesman/stateswoman like way, and maybe reading philosophy and designing some new concepts for the new day in North Carolina.

It ought to be a terrible experience for a legislator to have to vote against what is good for the children, the honest, average citizen, the environment, etc. Let us dream of a rebirth of conscience in some of our leadership.

If we don't soon make the needed reforms, the remaining 20% of the voters will also stop voting. They are asking "Is North Carolina so much under the control of powerful special interests that we can't fix it?" Maybe soon special interests will be in position to block all meaningful reform. I am afraid we are too close to that sad state already.

Why should anyone say such a thing? Because we hear what the insiders are saying about real reform happening in this session of the legislature. They are saying "It has virtually no chance in 1997 and that it may not make it through the committees, so it can be voted up or down." Who can tell me big money and unnamed power brokers among the incumbents won't go on ruling in North Carolina against the people's best interest. Money, Power and Special Interests corrupt.

Are they indeed already too strong for the democratic processes to make needed reform. From a citizen's perspective, it certainly appears to be so.

Samuel H. Brown, Chr.

recycled pa

North Carolina Alliance for Democracy

604 Hatch Rd, Chapel Hill, NC 27516

919-967-1699; toll free 888-OURVOTE; fax 919-968-9184; http://www.rtpnet.org/~alliance/

Elections that are for sale are not free.

February 4, 1997

What Senate Bill 1 Does - and What it Doesn't

The NC Alliance for Democracy has been seeking reform that provides:

1) Full and timely disclosure of campaign contributions
2) Appropriate and effective enforcement
3) A Clean money option for qualified candidates who agree to limit spending - and which closes the campaign finance loopholes for those candidates.

Our analysis shows that Senate Bill 1 fails to meet any of these criteria.

Senate Bill 1 has the following major provisions. Our comments on these provisions are noted in italics:

LOWER THE CONTRIBUTION LIMIT AND CLOSE LOOPHOLES FOR PARTY CONTRIBUTIONS, FAMILY CONTRIBUTIONS, AND SECOND PRIMARIES

Sec. 1 (a) and (b) Lowers the limit on single campaign contributions per election (primary, second primary, and the general are each an election) from the present $4000 to $2000. *This would have little real effect since an individual contributor could simply channel money through another family member and an industry or association could create multiple PACs.*

Sec. 1(c) Under the Buckley v. Valeo Supreme Court decision, candidates can't be required to limit contributions to their own campaigns (except voluntarily, as in exchange for public funding). Present North Carolina law also allows a candidate's spouse, parents, brothers and sisters to make unlimited contributions. This provision would allow only the candidate to make unlimited contributions to his or her campaign. *It would appear that family members could still give the candidate funds personally or perhaps open a joint account which the candidate could then draw on for his or her campaign. Interpretation and enforcement of this provision would determine how easy it would be to get around.*

Sec. 1 (d) A recent State Board of Elections ruling allows a candidate to count the second primary as a separate "election" for which he or she can accept contributions even if the candidate does not have a second primary. This provision requires that the candidate be on the ballot in the second primary for it to count as an election for contribution purposes. *This might be considered a step forward except that closing a loophole makes little difference if there remain other channels through which the same money can flow.*

Sec. 1 (e) Present North Carolina law allows unlimited contributions to a political party and from a political party to a candidate. This provision limits all contributions to or from a political party's various executive committees collectively to $2000 per election. *Political parties can easily move from the role of directly giving contributions to channeling money directly to candidates through direct mail and fund-raisers.*

ELECTRONIC FILING AND PUBLIC ACCESS ON THE INTERNET

Sec. 2. (j) Electronic filing will be required for General Assembly and statewide candidates, parties, and PAC's that contribute to General Assembly or statewide candidates or make independent expenditures that affect those races. The Board of Elections will provide access to the campaign finance reports on the internet as soon as technically feasible.
This is an important step forward.

Sec. 5. (a) During even-numbered number years filings shall be quarterly and semi-annually during non-election years (with minor exceptions). *This timetable is not an improvement over the present one. The last filing before the May primary would be April 1 - too early to reveal many of the contributions. The report due before the general election would cover activity from July 1 to the 17th day before the election, too long a period without any disclosure. There is also no timely disclosure of late contributions.*

Sec. 6. The Board of Elections will study the feasibility of requiring monthly campaign finance reports in election years and weekly during the month before elections. The Board will report on March 1, 1998. *The Board of Elections has indicated that there are no technical reasons for not moving toward implementation of this now. This schedule would be the timely reporting that is needed.*

DONOR'S OCCUPATION

Sec. 4(a)(1) Contributors giving over $100 would be required to list their occupation.
Unfortunately, occupation, by itself, is almost meaningless. The <u>whole point</u> of disclosure is to let the public know what economic interests are supporting a candidate and to identify bundling of contributions. A contributor saying he is a "business owner," "executive," "CEO," "salesman," or "analyst" tells the public almost nothing. Many Southern states require listing of employers now. North Carolina should too.

REPORTING IN LOCAL ELECTIONS

Sec. 5 This section of the bill requires reporting on all local referenda and requires reporting from local governments having 10,000 or more citizens. The current lower limit is 50,000. *This is a step forward - but will the funding and enforcement changes be forthcoming to make it meaningful.*

FUNDRAISING SECTION

Sec. 6 Currently lobbyists are forbidden to give contributions to elected state officials during a legislative session -- unless that official has filed to run for re-election. This bill extends that limited restriction to the political committee or its parent body that employs the lobbyist. It does not apply to political parties. (In effect, this means that most politicians can't accept money from lobbyists or their PAC's during the long session but can accept it during the short session.) *This section would have little real effect. Lobbyists can still promise contributions, even in the long session, to be made later.*

In Summary

Senate Bill 1 fails to provide full disclosure and timely reporting.

It does not address enforcement at all.

It restricts a few channels through which campaign money flows but leaves plenty of ways open so that any special interest can still move almost unlimited amounts of money directly to a campaign or to aid that campaign through an independent expenditure campaign. Since it has no spending limit provisions, it will do little, if anything, to stop the rapid escalation of campaign spending. It does not include a clean money option by which a qualified candidate can run for office without being personally wealthy or relying on special interests for support. Senate Bill 1 will not work. Senator Gulley's NC Clean Elections Act, to be introduced shortly, will work and, therefore, we support it

Passage of Senate Bill 1 as is would be a mistake. It would only build the public cynicism about a political process unable to reform itself. It would be seen as more political posturing and a half way measure designed to fail.

We Respectfully Recommend:
- that the Committee refer this bill to a sub-committee where it be re-evaluated in detail and compared to the NC Clean Elections Act, and
- that the sub-committee report out a separate bill which provides full disclosure and timely reporting with appropriate and realistic enforcement.

For further information contact:
Warren Murphy, President, NC Alliance for Democracy, 779-5337
Peter MacDowell, Coordinator, NC Alliance for Democracy, 967-1699
Elizabeth Kopf, Executive Director, Common Cause/NC, 834-4509
Marion Dodd, League of Women Voters Delegate to the Alliance, 787-5180
Michael Rulison, President, NC Consumers Council, Inc., 782-9576

North Carolina Alliance for Democracy

Mission Statement

The North Carolina Alliance for Democracy is a nonpartisan, grassroots coalition of organizations and individuals from across North Carolina dedicated to making North Carolina's election process truly democratic. Our objectives are to:

1. Reform methods of financing political campaigns to insure the public's right-to-know, combat corruption, conflict-of-interest, and the undue influence of campaign contributions in the political process so that candidates can compete more equitably for public office, and to

2. Promote reforms in the regulation of governmental lobbying and ethics which will best result in a political process which is open, accountable, and responsive to the public, and to

3. Protect the right of all citizens to vote through maintenance of a permanent, uniform voter registration process which poses the minimum possible barriers to voting consistent with preventing fraud, and promote consistent application of election laws across the state, and to

4. Promote measures which will result in fairer, more competitive, and more informative political campaigns including easier access to the ballot for independent candidates and third parties and giving local government the right to adopt proportional representation forms of election.

Member Groups of North Carolina Alliance for Democracy

STATEWIDE ORGANIZATIONS

Alliance for a Responsible Swine Industry
Blue Ridge Environmental Defense League
Center for Voting and Democracy
Christian Social Ministries of the Episcopal Diocese
Clean Water Fund of North Carolina
Common Cause/NC
Common Sense Foundation
Institute for Southern Studies
NC AFL-CIO
NC Alliance for Transportation Reform
NC Citizen Action
NC Consumer's Council, Inc.
NC Council of Churches
NC Fair Share
NC Interfaith Alliance
NC League of Women Voters
NC Low Income Housing Coalition
NC National Abortion Rights Action League
NC Occupational Safety and Health Project
NC Peace Action
NC Waste Awareness and Reduction Network
US Public Interest Research Group/NC

LOCAL AND REGIONAL ORGANIZATIONS

Cape Fear River Watch
Center for Reflection on the Second Law
Chatham Political Reform Group
Citizens for Responsible Government - Greensboro
Community United Church of Christ -Social Action Com.
Concerned Citizens of Tillery
Durham Peoples Alliance
Fund for Investigative Reporting
Ground Zero
Internationalist Book Store
New River Foundation
NC Coastal Federation
Orange County Greens
Raleigh Peace Action
Raleigh Friends Meeting
Student Environmental Action Coalition - UNC
Triangle Chapter of Physicians for Social Responsibility
United Nations Association of Wake County
Wake Housing and Homeless Coalition
Western NC Alliance

2/1/97

Individual member groups do not necessarily participate in or endorse every activity of the Alliance.

Call the Alliance at 919-967-1699; Fax 919-968-9184; write us at 604 Hatch Rd., Chapel Hill, NC 27516, or visit our web site: http://www.rtpnet.org/~alliance/.

W. J. "BILL" McCUEN
SECRETARY OF STATE
Ethics Division
Little Rock, Arkansas 72201-1094

ARKANSAS

CAMPAIGN CONTRIBUTION REPORT

SHARON PRIEST — Name of Candidate | 1/13/95 — Date of This Report | Page 3 of 11

PLEASE TYPE OR PRINT — Do not list contributions previously reported. Itemize contributions over $100.

1. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
Dennis D. Davis 19 Masters Circle Little Rock, AR 72212	Capital Group 2230 Cottondale Lane Little Rock, AR 72202 Occupation: Investment Counselor Aggregate This Election ➤ $ 250.00	250.00
2. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
Pulaski County Young Democrats 1300 W. Capitol Little Rock, AR 72201	N/A Occupation: n/a Aggregate This Election ➤ $ 250.00	250.00
3. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
George O. Jernigan, Jr. #10 Woodsong Roland, AR 72135	Self Occupation: Attorney Aggregate This Election ➤ $ 250.00	50.00
4. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
Peggy Johnson 13801 St. Charles Blvd. Little Rock, AR 72211	Self Occupation: Attorney Aggregate This Election ➤ $ 250.00	250.00
5. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
Becky Messenger Southwest Hospital 11401 I-30 Little Rock, AR 72209	Same Occupation: Fiscal Officer Aggregate This Election ➤ $ 250.00	250.00
6. Full Name, Mailing Address and ZIP Code of Contributor	Employer and Principal Place of Business / Occupation / Aggregate This Election	Amount of Each Contribution This Per
Donald Munro P.O. Box 1157 Hot Springs, AR 71901	Munro & Co., Inc. Shoe Mfg. Co. Hot Springs, AR 71901 Occupation: Owner Aggregate This Election ➤ $ 250.00	250.00

Name of candidate or committee _____ **Page** _____ **of** _____

Reporting period _____ **through** _____

MISSISSIPPI

ITEMIZED RECEIPTS

	Date (mo., day, year)	Amount of each receipt this period
A. Full name Mailing address City, State, Zip Code Name of employer Occupation		$
	Aggregate year-to-date	$
B. Full name Mailing address City, State, Zip Code Name of employer Occupation		$
	Aggregate year-to-date	$
C. Full name Mailing address City, State, Zip Code Name of employer Occupation		$
	Aggregate year-to-date	$
D. Full name Mailing address City, State, Zip Code Name of employer Occupation		$
	Aggregate year-to-date	$
E. Full name Mailing address City, State, Zip Code Name of employer Occupation		$
	Aggregate year-to-date	$

VIRGINIA

SCHEDULE A
ITEMIZATION OF CONTRIBUTIONS OVER $100

Include any funds transferred from a preceding campaign.

Full name of candidate, candidate's committee, political party committee, political action committee or other committee

Full Name of Contributor (List Alphabetically)	Mailing Address Of Contributor Include ZIP	Occupation and Principal Place of Business Of Contributor	Date Received	Contribution This Period	Aggregate To Date

On last page of Schedule A
TOTAL THIS PERIOD
[Also enter on Line 1 of Schedule G.] $ _____

Date _____ Page _____ of _____

KENTUCKY

KENTUCKY REGISTRY OF ELECTION FINANCE
140 Walnut Street
Frankfort, Kentucky 40601
(502) 573-2226 FAX (502) 573-5622

ITEMIZED RECEIPTS SCHEDULE 1A

1. Name of Candidate: DAVID K KAREM

2. Committee Name: DAVID K KAREM FOR STATE SENATOR

3. This Statement covers: From: 6-27-96 To: 10-4-96

4a. Name and Address from whom received. Receipts in excess of $100 must be itemized.	4b. Marital Status	5. Type of Contribution or Other Receipt:	6. Date of Receipt	AMOUNT 7a. Contribution by check or Written Instrument	AMOUNT 7b. Other Receipts	8. Cumulative for Election (per Contributor)	9. Occupation and Employer of Contributor. (If self-employed, name under which doing business.) Occupation shall be specific. Statewide candidates must include spouse's name, employer and occupation
RICHARD H. THOMPSON 2610 WINDSOR FOREST LOUISVILLE KY 40272		O Direct from Candidate O Loan from Candidate X Direct from a person or authorized entity X From Fundraising Event O From Fund Raiser (Person) O Other:	8-13-96	250-		250-	REALTOR RICHARD H. THOMPSON REALTORS
EDWIN R MONTGOMERY 4738 DIXIE HGWY LOUISVILLE KY 40216		O Direct from Candidate O Loan from Candidate X Direct from a person or authorized entity O From Fundraising Event O From Fund Raiser (Person) O Other:	8-13-96	200-		200-	REALTOR EDWIN R MONTGOMERY REALTORS
CREIGHTON E. MERSHON 2311 RALEIGH LN LOUISVILLE, KY 40206		O Direct from Candidate O Loan from Candidate X Direct from a person or authorized entity X From Fundraising Event O From Fund Raiser (Person) O Other:	8-19-96	250-		250-	GENERAL ATTORNEY SOUTH CENTRAL BELL
FRANK J MARTIN, MD 3609 INDOCIN CT LOUISVILLE KY 40220		O Direct from Candidate O Loan from Candidate X Direct from a person or authorized entity X From Fundraising Event O From Fund Raiser (Person) O Other:	8-19-96	150-		150-	MD (EMERGENCY MED) AUDUBON HOSP.
GAREY HIGDON 325 W. MAIN #1820 LOUISVILLE KY 40202		O Direct from Candidate O Loan from Candidate X Direct from a person or authorized entity O From Fundraising Event O From Fund Raiser (Person) O Other:	8-19-96	500-		500-	PRESIDENT RIVERCITY PROPERTIES

Subtotal This Page	1350-	
(Only on last page of Schedule) Total This Period		

Enter the total on line 1a of Summary Page

Enter the total on line 1b of Summary Page

VISITOR REGISTRATION SHEET

Senate Judiciary Comm. 2-4-97
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jill Miller	NCATL
Dick Taylor	NCAJ
Chris Fitzsimon	Common Sense Foundation
Lori Everhart	Citizen Action
Bindu Rao	Common Sense Foundation
Gayle Pignone	for NCAD (small business owner)
MARIYA TALIB	NCAD & NC WARN
Patrice Ponder	NCACC
Bob Hall	Democracy South
Leigh Bradley	Democracy South
Michael Rulison	N.C. Consumers Council, Inc. Box 3401, Chapel Hill NC 27514-3401
Cindy Garrison	Senate Page Coordinator Committee Clerk's Office
Johnnie McLean	St. Bd. of Elections
Yvonne L Southerland	State Bd of Elections
Millie Carpenter	NCHSA

VISITOR REGISTRATION SHEET

Senate Judiciary Comm. 2-4-97
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ben Holman	CCNC / Sierra Club
Amanda Davis	Sierra Club
Amy Hinderer	Governor's Office
Gerry Cohen	Bill Drafting
Andy Romanet	N.C.L.M.
Eleanor Kinnaird	NCCR Dir. - senate
Pete MacDonald	Democracy South
K Mitchell	NJSRNG
Samuel Brown	Common Cause - NC
Ed Brackett	Asheville Citizen-Times
Glenn Jernigan	N.C. National Guard

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 2-14-97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Charles K. Craven	State Planning (CJ Analyst)
Jim Ahler	NC. Assn of CPAs
[illegible]	NCAE
Leslie Bevacqua	NCCBT
Andy Ellen	NC Farm Bureau
Bob Phillips	Lt. Gov's Office
Frank Freeman	Gov. Hunt's office
Judy Hutchison	Wake Co Bd of Elections
Kathryn Queen	Wake Co. Bd. of Elections
Senator Weinstein	State Senator District 30
John Garwood	State Senator District 27
John Bowdish	Zeb Alley PA
Dan McLaurin	SCENIC NC
Charles Groner	NCATL

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 6, 1997

The Senate Judiciary Committee met on Thursday, February 6, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. Twenty-three members were present.

Senator Cooper called the meeting to order at 10:05 a.m.

Senator Rand was recognized to explain **Senate Bill 27** - AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO.

Senator Rand moved to adopt a Proposed Committee Substitute to Senate Bill 27 for discussion. The motion carried by voice vote.

Senator Ballantine moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Robin Lubitz, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, was recognized to make a presentation on Structured Sentencing in North Carolina to the Committee.

Mr. Lubitz gave a brief history of Structured Sentencing in North Carolina which can be found in Attachment #1.

This was followed by a slide presentation on the components of structured sentencing. (See Attachment #2.)

There being no further business, the meeting adjourned at 10:55 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 6, 1997

AGENDA

SB 27	Veto Procedural Changes	Rand
Robin Lubitz	Sentencing Commission	Presentation

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

February 6, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 27 - VETO PROCEDURAL CHANGES** - Senator Rand.

The Proposed Committee Substitute for Senate Bill 27 would make several procedural changes and clarifications to the process of transmitting ratified bills to the Governor for approval or veto, and the process of the Governor notifying the General Assembly of his action.

Section 1 of the bill makes two changes to the process in transmitting ratified bills to the Governor. First this section changes the time the enrolling clerk is to deliver the ratified bill to the Governor from the time moving for reconsideration of a bill had expired to the next business day after the bill was ratified. The next business day is defined in the bill. This change is necessitated by the parliamentary rules followed by the General Assembly that permits the body to suspend its rules to reconsider a bill at anytime. Generally the rules of the Senate and House allow motions for reconsideration on the same or next succeeding legislative day to be adopted by majority vote. A suspension of the rules requires a two-thirds vote. The proposed change sets a date certain for deliver of a bill to the Governor.

Second, this section clarifies that a bill subject to veto may only be recalled from Enrolling or from the Governor only by a joint resolution adopted by both houses. Under current law, one house may recall a bill from enrolling.

Section 2 adds a requirement that when the Governor is not required to call the General Assembly back into session to consider overriding a veto because a majority of the members of each house have told the Governor in writing that a session is not necessary, the Governor is to issue a proclamation to that fact and shall notify the President Pro Tempore, the principal clerks and the presiding officers of both house.

Section 3 substitutes the principal clerk of the second house to vote to override a veto for that body's presiding officer as the official to certify as to the time the bill became law. This section also adds a provision to clarify how the period of time the Governor has to act on a bill is calculated to exclude the day the bill is

presented to the Governor and to include the entire last day of the period. (10 days if the General Assembly is in session, 30 days if out of session.)

This bill is effective when it becomes law, which now means that the bill becomes effective when the Governor signs the bill, fails to veto it in time, or the Governor's veto is overridden.

A copy of the constitutional provision and the relevant statutory provisions are attached.

Sec. 22. (Effective January 1, 1997, contingent upon approval) Action on bills.

(1) *Bills subject to veto by Governor; override of veto.* Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) *Amendments to Constitution of North Carolina.* Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) *Amendments to Constitution of the United States.* Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) *Joint resolutions.* Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) *Other exceptions.* Every bill:

(a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;

(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;

(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) *Local bills.* Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

(c) 1996 by Michie, a division of Reed Elsevier Inc.

(a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or

(b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) *Time for action by Governor; reconvening of session.* If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) *Return of bills after adjournment.* For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.

(1995, c. 5, s. 1.)

Section Set Out Twice. - The section above is effective January 1, 1997, contingent upon approval. For this section as in effect until January 1, 1997, contingent upon approval, see the preceding section above.

Editor's Note. - Session Laws 1995, c. 5, s. 4, makes this section effective January 1, 1997 upon certification.

Session Laws 1995, c. 5, s. 3, provides that the proposed amendments set out in sections 1 and 2 of the act shall be submitted to the qualified voters at the general election in November 1996. Section 3 further provides for the form of ballot and the use of voting machines.

Session Laws 1995, c. 5, s. 4 provides that if a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 the State Board of Elections shall certify the amendments to the Secretary of State who shall enroll the amendments among the permanent records of that office.

(c) 1996 by Michie, a division of Reed Elsevier Inc.

§ 120-6.1. (Effective January 1, 1997, contingent on approval of proposed constitutional amendment) Request that reconvened session not be held.

(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary.

(b) The form for the requests shall be:

"To the Governor:

A reconvened session to reconsider vetoed legislation is unnecessary.

This _____ day of _____, _____,_____, Member of the [Senate] [House of Representatives]"

Petitions as they are received are public records and shall be maintained by the Office of the Governor.

§ 120-29.1. (Effective January 1, 1997, contingent on approval of proposed constitutional amendment) Approval of bills.

(a) If the Governor approves a bill, the Governor shall write upon the same, to the left of and below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved _____ .m. this _____ day of _____, _" and shall sign the same as follows: "_____ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for his signature on the _____ day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the presiding officers shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, ____.m. this _____ day of ____, ____". The second of them to sign shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

§ 120-33. (Effective January 1, 1997, contingent on approval of constitutional amendment) Duties of enrolling clerk.

(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision of the enrolling clerk.

(b) Prior to enrolling any bill, the enrolling clerk shall substitute the corresponding Arabic numeral(s) for any date or section number of the General Statutes or of any act of the General Assembly which is written in words. The enrolled bill shall have the word "RATIFIED" following the bill number.

(c) All bills shall be typewritten and carefully proofread before enrollment.

(d) Upon ratification of an act or joint resolution, the enrolling clerk shall present one true ratified copy:

(1) To the Governor of any act except acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

(2) To the Secretary of State of:

a. Acts not required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina; and

b. Joint resolutions.

In the case of any bill presented to the Governor, the enrolling clerk shall write upon the bill the time and date presented to the Governor.

(d1) The enrolling clerk shall present to the Secretary of State one true ratified copy of:

(1) Any bill which has become law with the approval of the Governor as provided by G.S. 120-29.2(a);

(2) Any bill which has become law without the approval of the Governor as provided by G.S. 120-29.2(b); and

(3) Any bill which has become law notwithstanding the objections of the Governor, as provided by G.S. 120-29.2(c).

(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until the time for moving a reconsideration shall have expired, unless expressly ordered by that house where such bill was ordered enrolled.

(e) Repealed by Session Laws 1995, c. 20, s. 1, effective January 1, 1997, contingent on approval of constitutional amendments.

(f) The enrolling clerk upon completion of duties after each session shall deposit the original bills and resolutions enrolled for ratification with the Secretary of State.

§ 120-34. Printing of session laws.

(a) (Effective January 1, 1997, contingent on approval of constitutional amendment) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.
The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the letters "S.L." followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections.

(b) All index references with respect to the session laws shall refer to the Chapter numbers of such laws in lieu of page numbers, and all index references to resolutions shall refer to the resolution numbers of the resolutions in lieu of page numbers, to the end that the indexes shall thereby be made consistent with the index to the General Statutes which refers to the section numbers and not to page numbers.

(c) There shall be printed not more than 2,500 volumes of the session laws and 600 volumes of the journals of each house of each session of the General Assembly, all of which shall be bound, and delivered to the Secretary of State for distribution by him under the provisions of G.S. 147-45, G.S. 147-46.1, G.S. 147-48 and other applicable statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 27

Short Title: Veto Procedural Changes. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-33(d2) reads as rewritten:

"(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until ~~the time for moving a reconsideration shall have expired,~~ the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution. In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

Section 2. G.S. 120-6.1(a) reads as rewritten:

"(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after

such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses."

Section 3. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, ~~to the left of and~~ below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved _____.m. this _____ day of _____,_____' and shall sign the same as follows: '_____ Governor'. The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: 'This bill having been presented to the Governor for his signature on the _____day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk'.

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the ~~presiding officers~~ principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: 'Became law notwithstanding the objections of the Governor, ____.m. this _____ day of _____, _____'. The ~~second of them to sign~~ principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 27
Proposed Committee Substitute S27-PCS8518

Short Title: Veto Procedural Changes. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PROCEDURAL CHANGES IN THE CONFORMING LEGISLATION CONCERNING GUBERNATORIAL VETO.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-33(d2) reads as rewritten:

"(d2) No bill required to be presented to the Governor under Article II, Section 22 of the Constitution of North Carolina shall be so presented until ~~the time for moving a reconsideration shall have expired,~~ the next business day after the bill was ratified, unless expressly ordered by that house where such bill was ordered enrolled. For the purpose of this section, a business day is a weekday other than one on which there is both a State employee holiday and neither house is in session. No bill required to be presented to the Governor under Article II, Section 22 of the North Carolina Constitution shall be recalled from the Enrolling Clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution."

Section 2. G.S. 120-6.1(a) reads as rewritten:

"(a) As provided by Section 22(7) of Article II of the Constitution of North Carolina, if within 30 days after adjournment, a bill is returned by the Governor with objections and veto message to that house in which it shall have originated, the Governor shall reconvene that session as provided by Section 5(11) of Article III of the Constitution for reconsideration of the bill, unless the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary. If sufficient

requests are received such that the session will not be reconvened, the Governor shall immediately issue a proclamation to that effect and so notify the President Pro Tempore of the Senate and the principal clerks and presiding officers of both houses."

Section 3. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, ~~to the left of and~~ below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: 'Approved _____.m. this _____ day of _____,_____' and shall sign the same as follows: '_____ Governor'. The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: 'This bill having been presented to the Governor for his signature on the _____day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk'.

(c) If the Governor returns any bill to the house of origin with his objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the ~~presiding officers~~ principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: 'Became law notwithstanding the objections of the Governor, ____.m. this _____ day of _____, _____'. The ~~second of them to sign~~ principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, February 06, 1997

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

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

S.B. **27** Veto Procedural Changes

Draft Number:	S27-PCS8518
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

STRUCTURED SENTENCING IN NORTH CAROLINA

PRESENTED TO THE SENATE JUDICIARY COMMITTEE

FEBRUARY 6, 1997

LEGISLATIVE DIRECTIVES

- ✓ CLASSIFY OFFENSES BASED ON SEVERITY
- ✓ RECOMMEND SENTENCING STRUCTURES
- ✓ DEVELOP CORRECTIONAL POPULATION SIMULATION MODEL
- ✓ RECOMMEND COMPREHENSIVE COMMUNITY CORRECTIONS STRATEGY
- ✓ MAKE ADDITIONAL POLICY RECOMMENDATIONS

COMPONENTS OF STRUCTURED SENTENCING

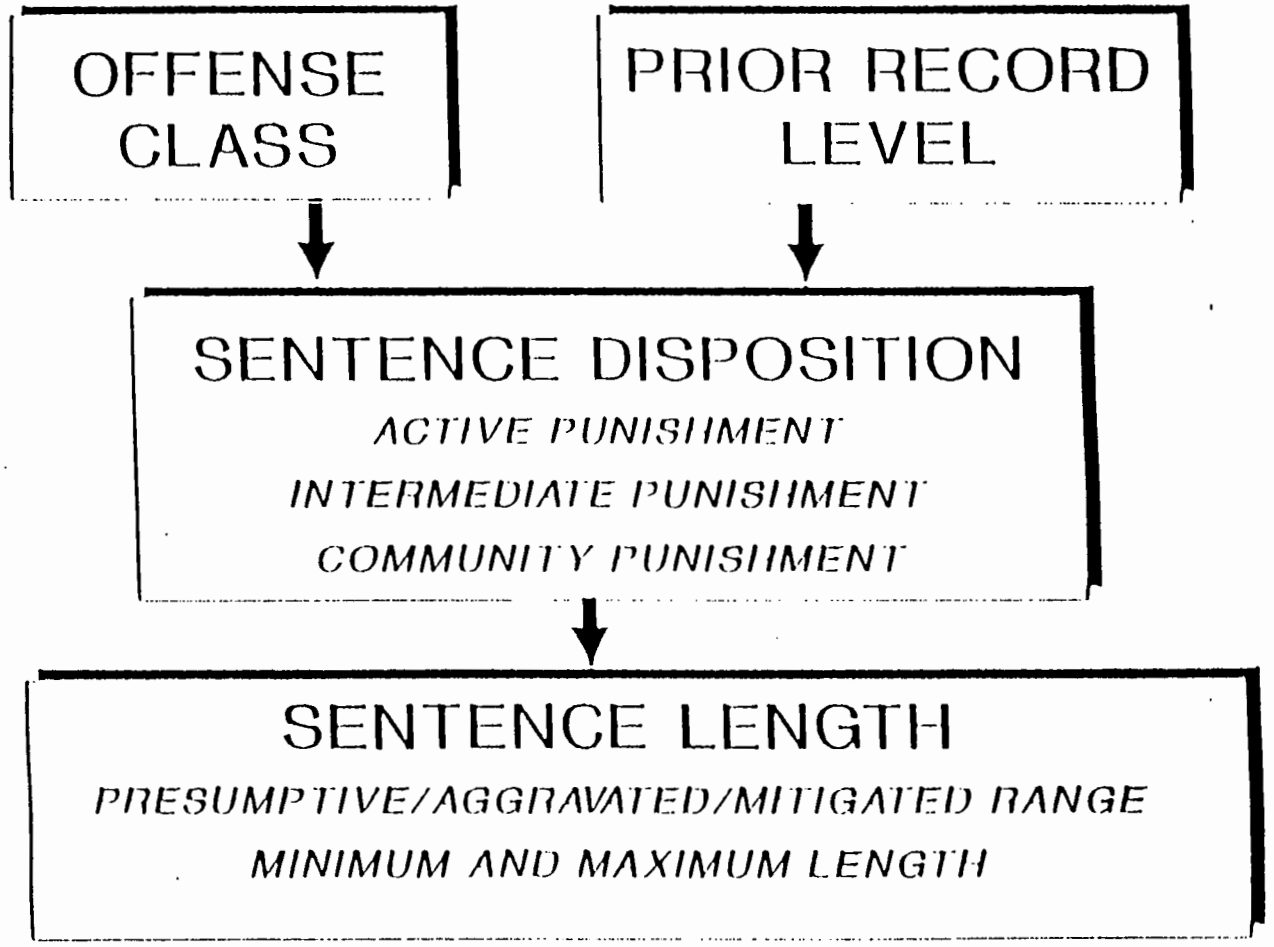


TABLE 1

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Significant societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

---

* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

WORKSHEET FOR DETERMINING PRIOR RECORD LEVEL

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Class 1 Misdemeanor Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in the prior offense		÷ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape		÷ 1	
		TOTAL	

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1						
B2						
C						
D						
E						
F						
G						
H						
I						

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

SENTENCE DISPOSITIONS FOR FELONS

ACTIVE PUNISHMENT "A"

Incarceration in prison

INTERMEDIATE PUNISHMENT "I"

Supervised probation which includes one or more of the following conditions:

Confinement in county jail as part of a split sentence
Boot camp
Residential facility
Day Reporting Center
Intensive Supervision Probation
Electronic Monitoring

May also include any other condition of probation

COMMUNITY PUNISHMENT "C"

Supervised or unsupervised probation which may include any condition of probation except those listed above

*** Fines and/or restitution may be added to any of the above ***

FELONY PUNISHMENT CHART
(Numbers shown are in months)

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
A	Death or Life Without Parole					
B1	A	A	A	A	A	A
B2	A	A	A	A	A	A
C	A	A	A	A	A	A
D	A	A	A	A	A	A
E	I/A	I/A	A	A	A	A
F	I/A	I/A	I/A	A	A	A
G	I/A	I/A	I/A	I/A	A	A
H	C/I/A	I/A	I/A	I/A	I/A	A
I	C	C/I	I	I/A	I/A	I/A

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

Effective for Offenses Committed on or after 12/1/95

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	DISPOSITION
A	Death or Life Without Parole						
B1	A *240-300* **192-240** *144-192*	A *288-360* **230-288** *173-230*	A *336-420* **269-336** *202-269*	A *384-480* **307-384** *230-307*	A *Life Without Parole* **346-433** *260-346*	A *Life Without Parole* **384-480** *288-384*	*Aggravated Range* **PRESUMPTIVE RANGE** *Mitigated Range*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *189 - 237* **151 - 189** *114 - 151*	A *220 - 276* **176 - 220** *132 - 176*	A *251 - 313* **201 - 251** *151 - 201*	A *282 - 353* **225 - 282** *169 - 225*	A *313 - 392* **251 - 313** *188 - 251*	
C	A *73 - 92* **58 - 73** *44 - 58*	A *100 - 125* **80 - 100** *60 - 80*	A *116 - 145* **93 - 116** *70 - 93*	A *133 - 167* **107-133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101-135*	
D	A *64 - 80* **51 - 64** *38 - 51*	A *77 - 95* **61 - 77** *46 - 61*	A *103 - 129* **82 - 103** *61 - 82*	A *117 - 146* **94 - 117** *71 - 94*	A *133 - 167* **107 - 133** *80 - 107*	A *146 - 183* **117 - 146** *88 - 117*	
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *34 - 42* **27 - 34** *20 - 27*	A *46 - 58* **37 - 46** *28 - 37*	A *53 - 66* **42 - 53** *32 - 42*	A *59 - 74* **47 - 59** *35 - 47*	
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*	
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *15 - 19* **12 - 15** *9 - 12*	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *20 - 25* **16 - 20** *12 - 16*	A *21 - 26* **17 - 21** *13 - 17*	A *29 - 36* **23 -29** *17 - 23*	
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*	
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 -10** *6 - 8*	

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment
***Numbers shown are in months and represent the range of minimum sentences.**

Revised: 08-04-95

FIGURE B: MINIMUM AND MAXIMUM SENTENCES

corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

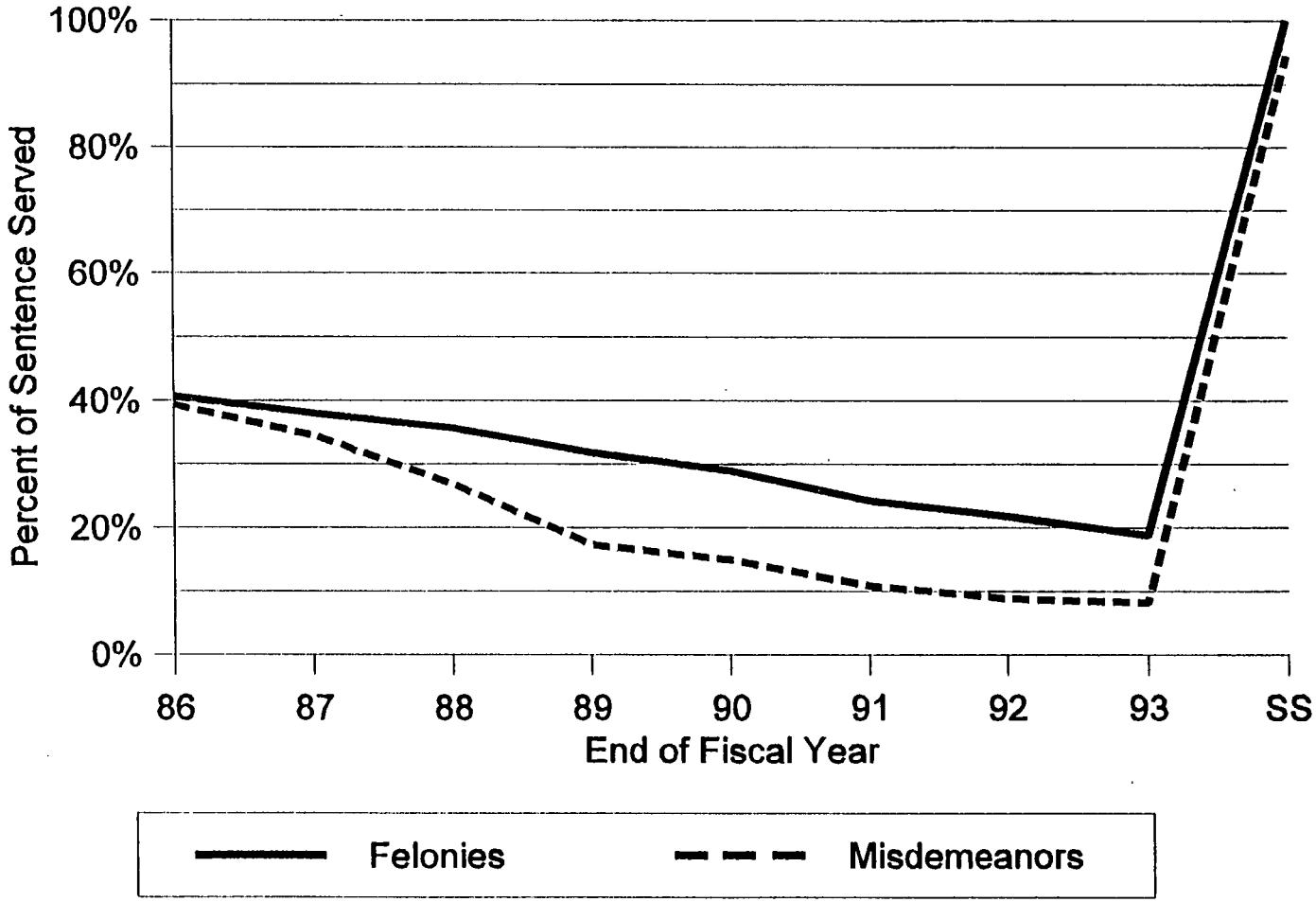
FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

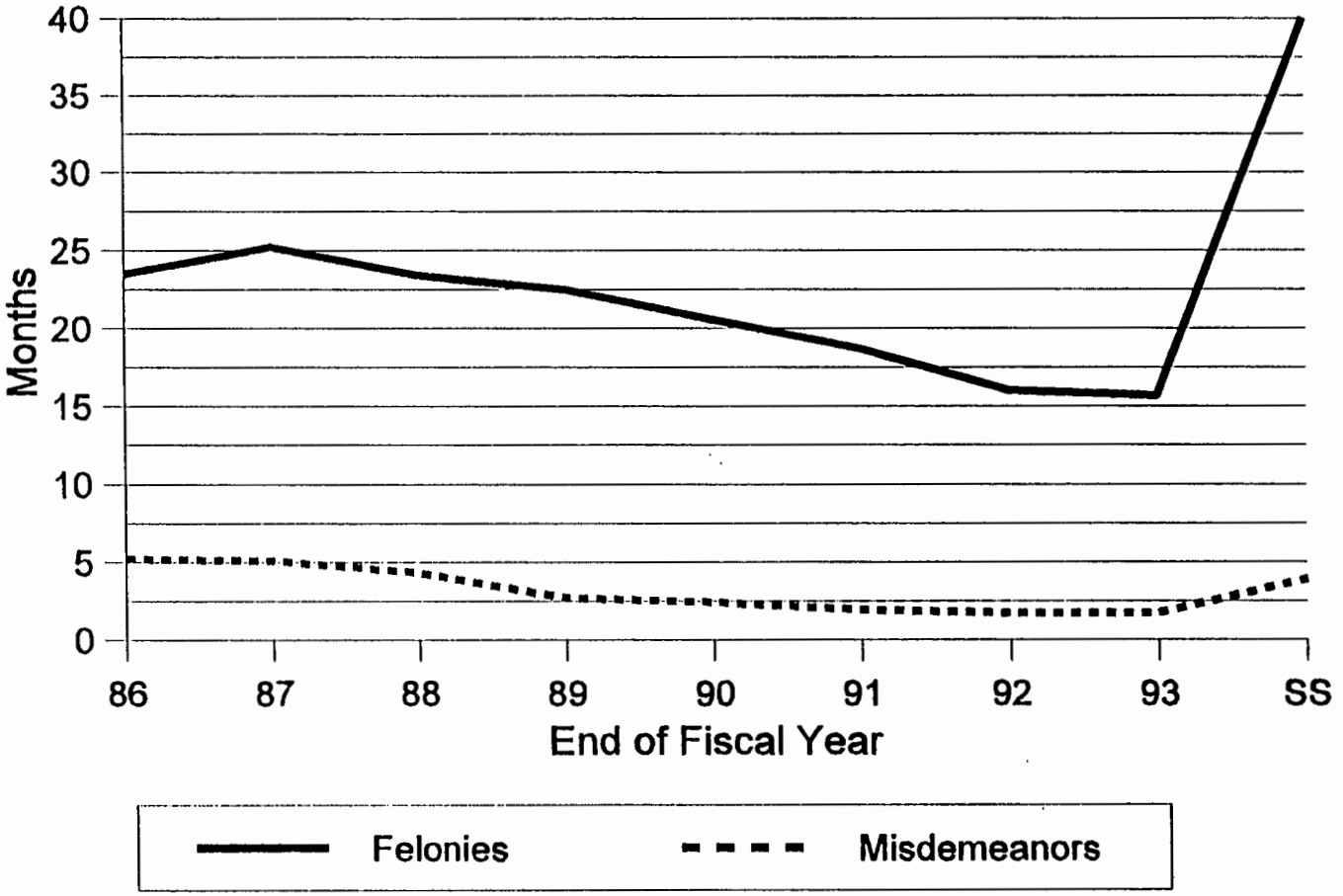
ADVANTAGES OF STRUCTURED SENTENCING

- PROVIDE UNDERLYING RATIONALE FOR SENTENCES
- ENHANCE CONSISTENCY IN SENTENCING
- ENHANCE CERTAINTY IN SENTENCING
- ESTABLISH TRUTH IN SENTENCING
- SET RESOURCE PRIORITIES
- BALANCE SENTENCING POLICIES WITH RESOURCES

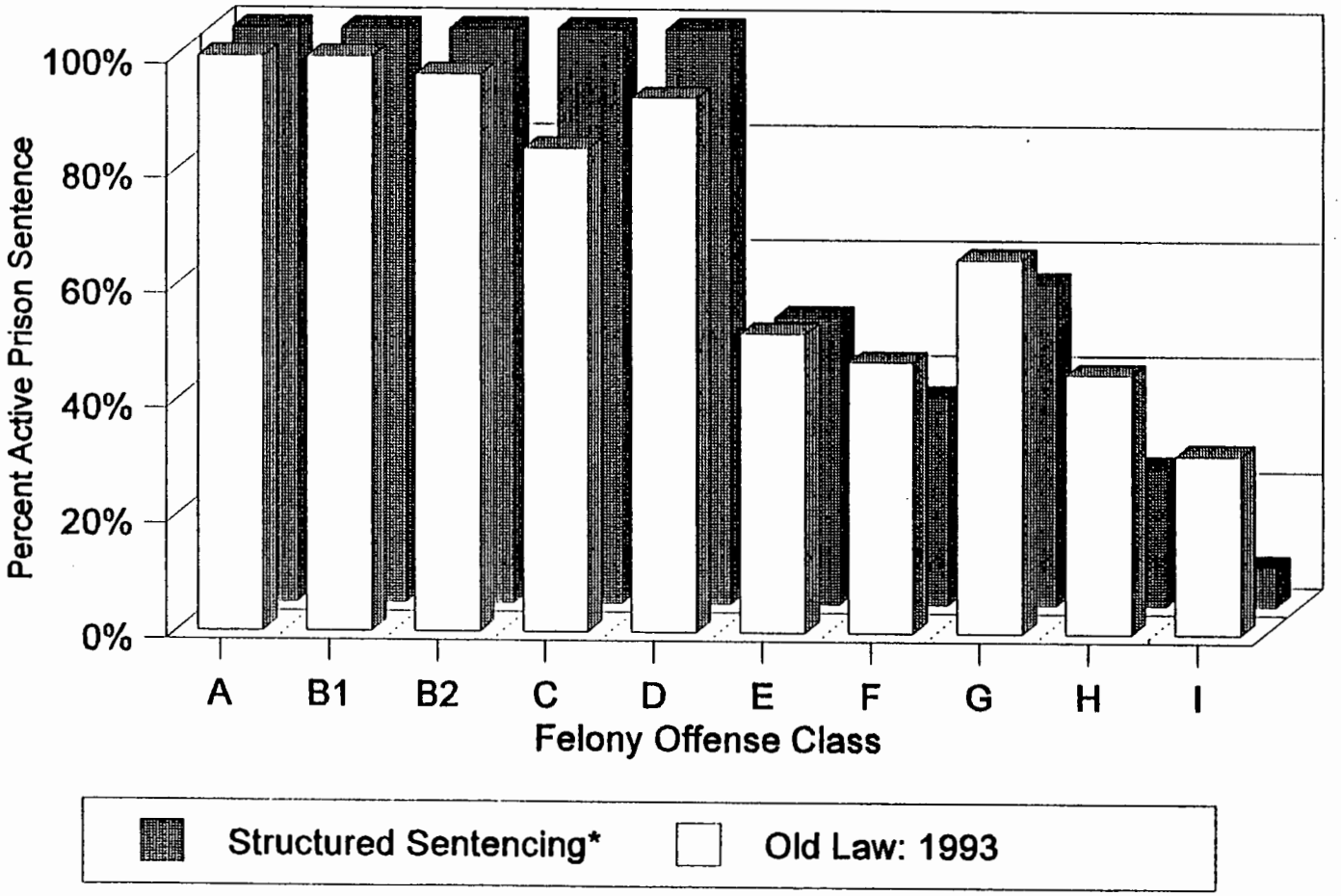
Average Percent of Sentence Served



Average Months Served in Prison

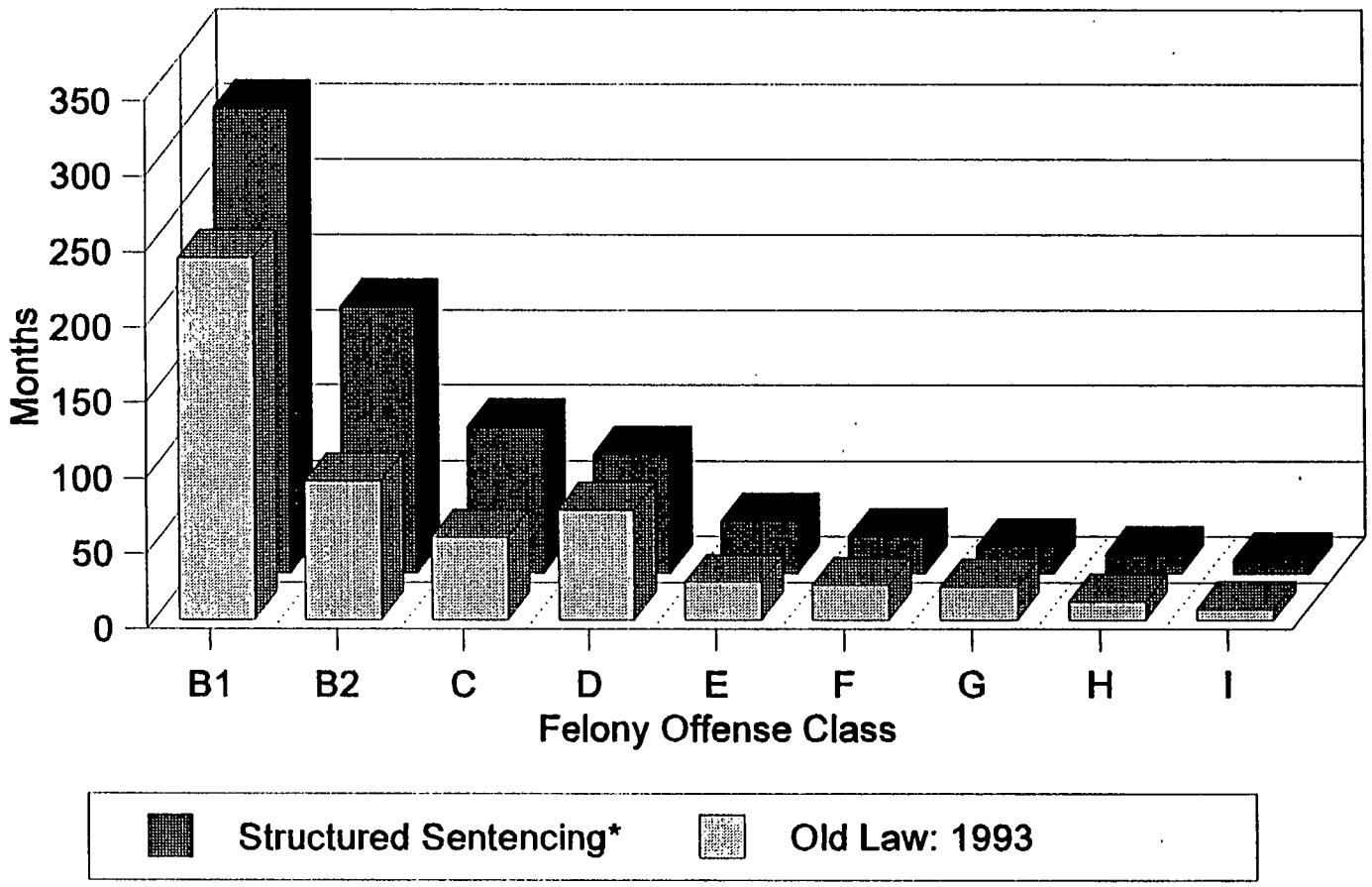


Percent Receiving Prison Sentence



* Fiscal Year 1995-96

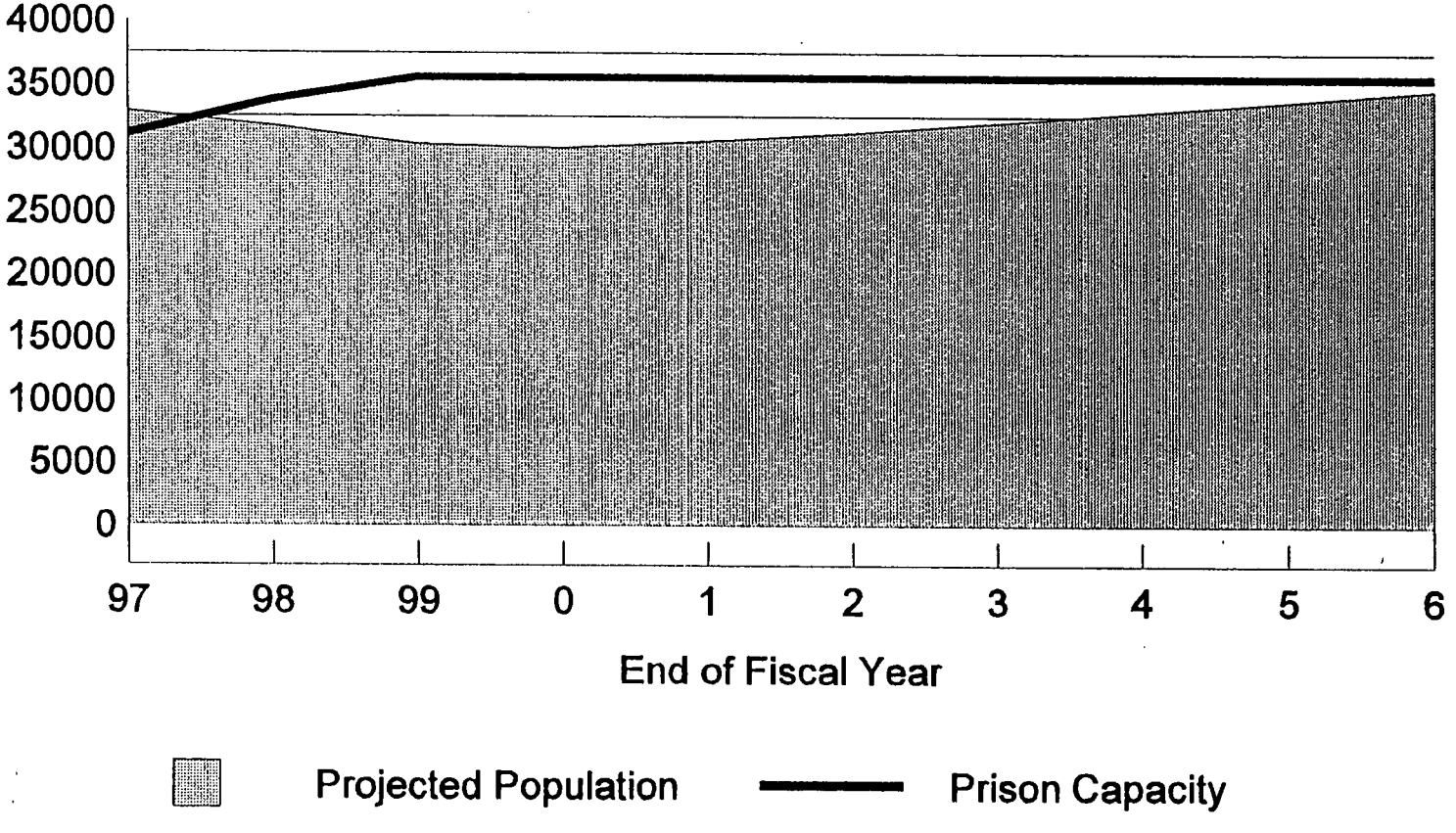
Average Months Served



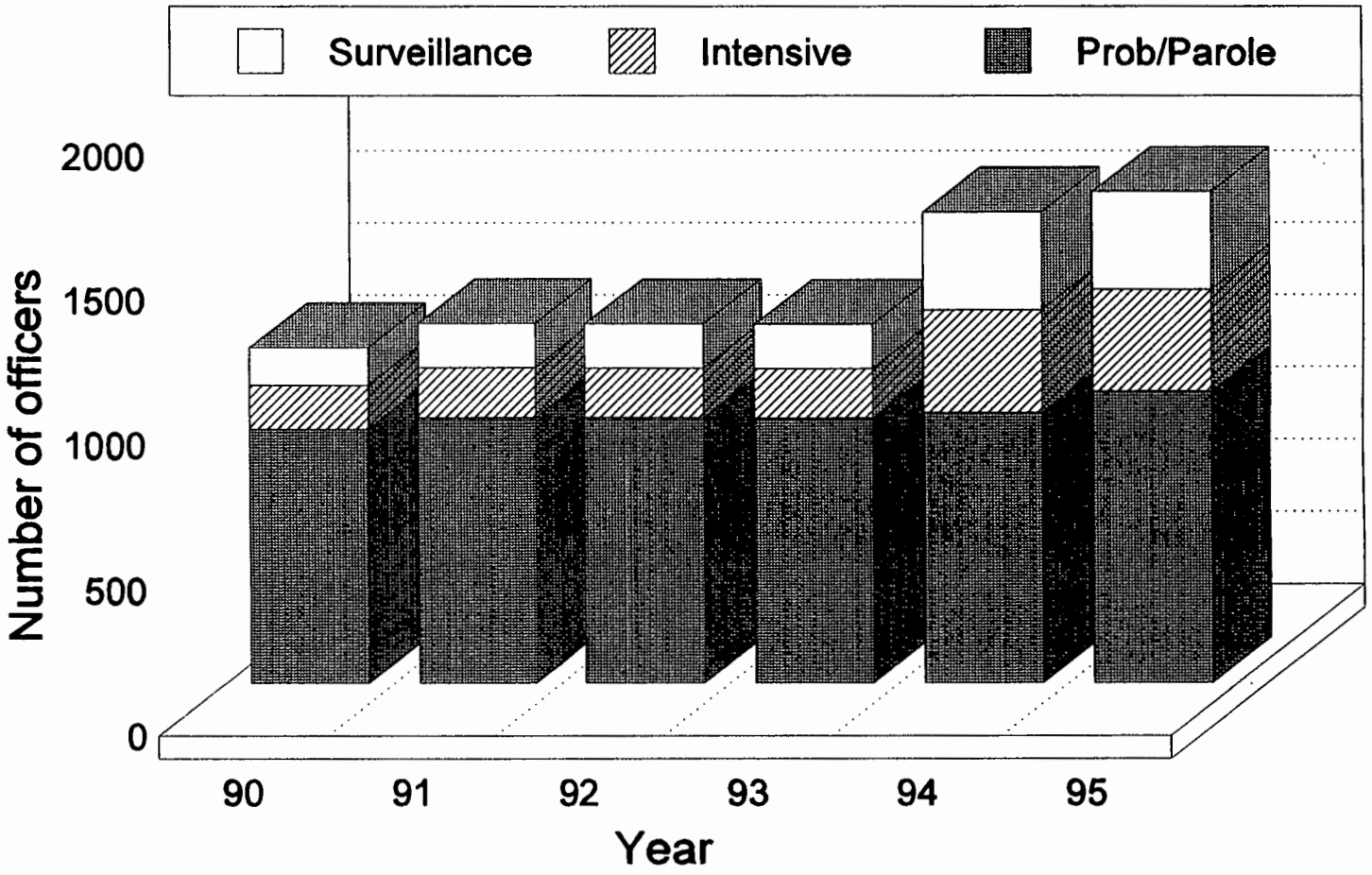
* Fiscal Year 1995-96

North Carolina Prison Projections

Population and Capacity

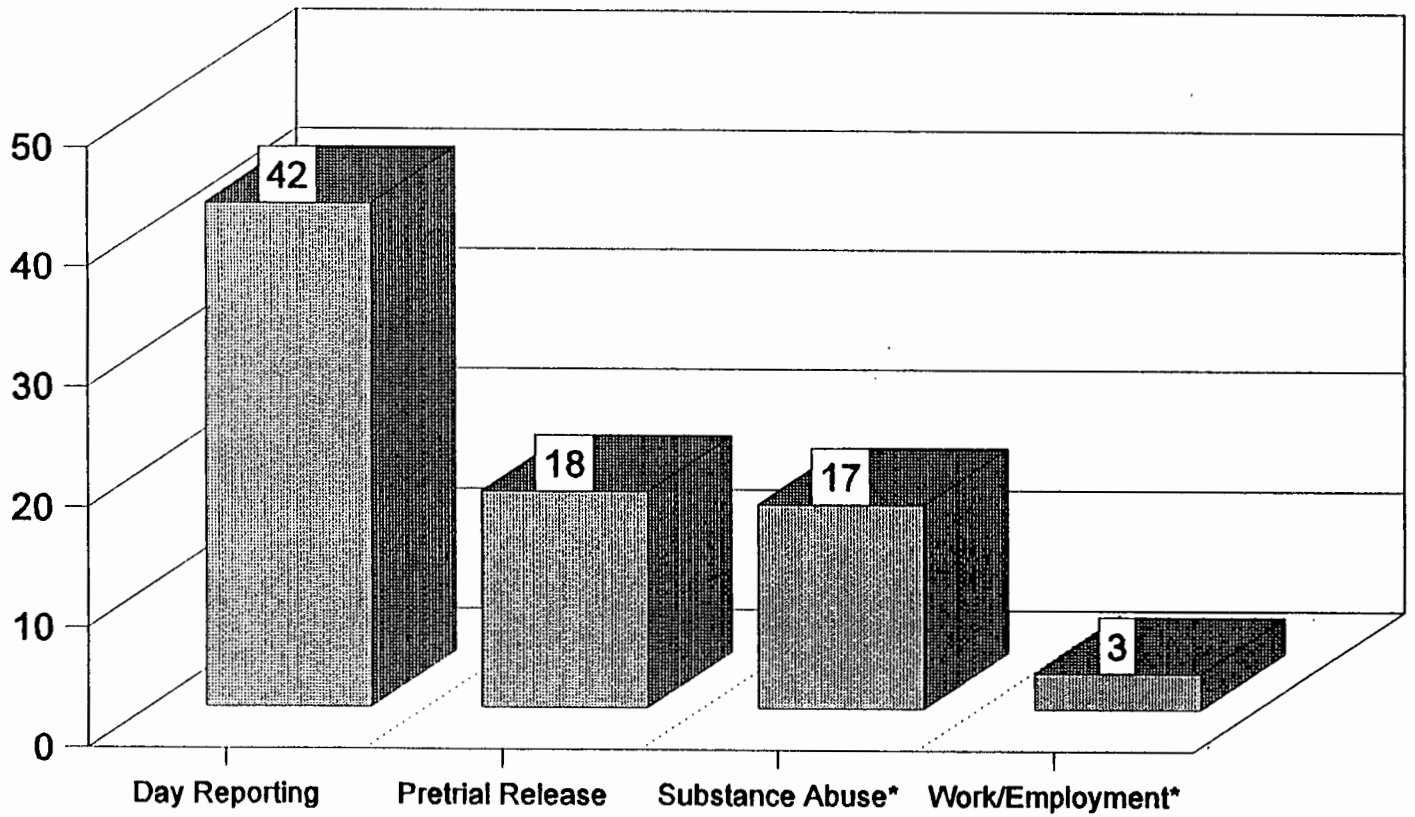


PROBATION DIVISION



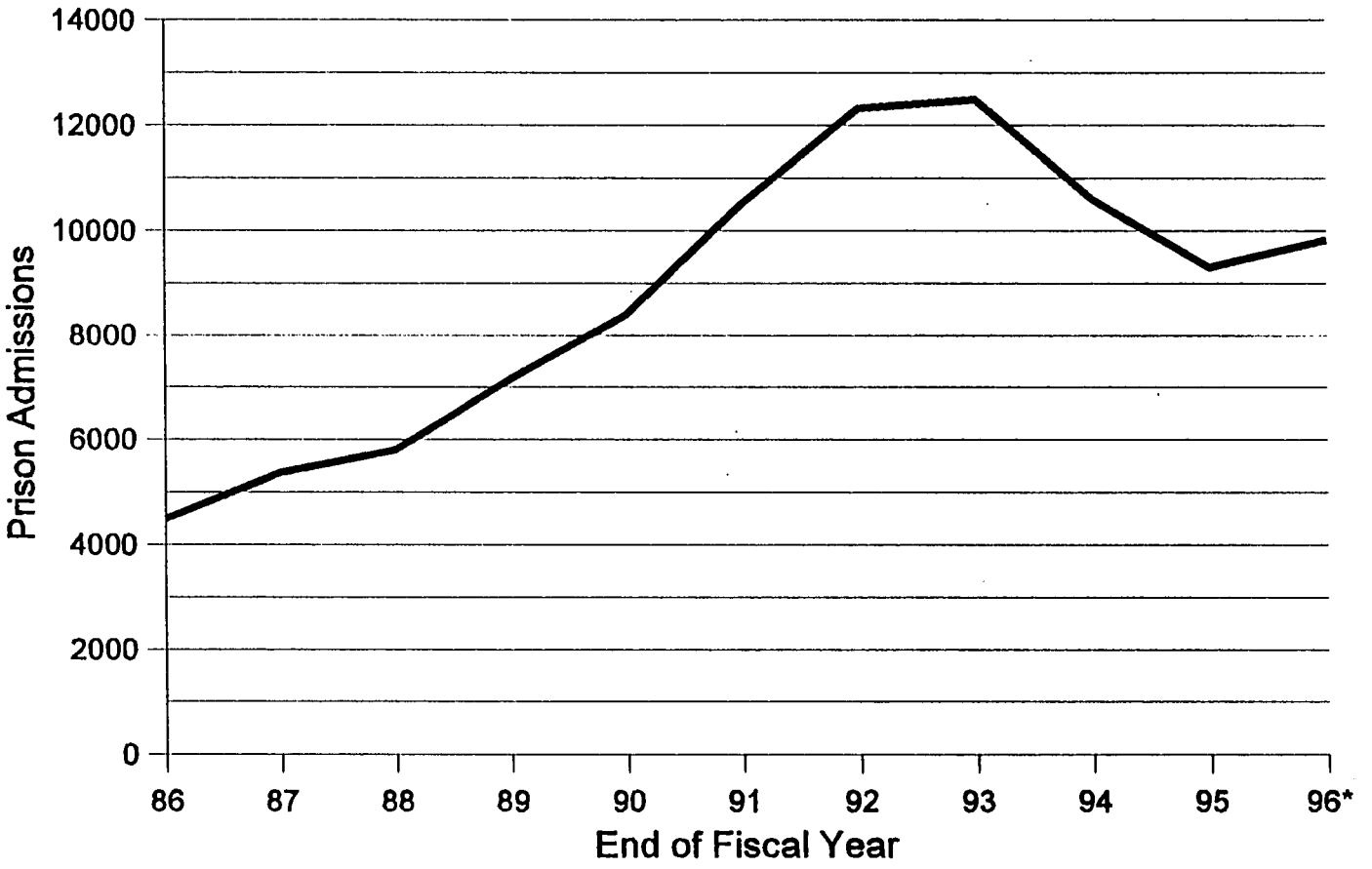
Criminal Justice Partnership

County Programs Funded: Updated 7/1/96



* Stand-alone programs

Probation Revocations



* Projected based on first 10 months of 1996

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 2-6-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bindu Rao	Common Sense Foundation
Amanda Digby	NC Academy of Trial Lawyers
R. Paul Wilms	NCMBA
Bill Alexander	NCPBA
Mary Robinson	Sentencing Commission
Deborah Mosher	Sentencing Commission
Dave Hoover	Smith Anderson

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 11, 1997

The Senate Judiciary Committee met on Tuesday, February 11, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed Committee members and guests.

Senator Ballance was recognized to explain **Senate Bill 15** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO ADD TO THE LIST OF AGGRAVATING FACTORS THAT CERTAIN PEOPLE WERE SERIOUSLY INJURED AS A RESULT OF THE OFFENSE.

Senator Winner moved to amend the bill on Page 1, Line 20 by deleting the words "resulted in" and adding the words "proximately caused". The motion carried by voice vote.

Senator Ballance moved to give the bill a favorable report as amended. The motion carried by voice vote.

Senator Phillips was recognized to explain **Senate Bill 12** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO REQUIRE ACTIVE TIME FOR HABITUAL IMPAIRED DRIVING CONVICTIONS.

Senator Kincaid moved to give the bill a favorable report. The motion carried by voice vote.

There being no further business, the meeting adjourned at 10:50.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 11,1997

AGENDA

SB 12	Habitual DWI/Active Time	Phillips
SB 15	Aggravating Factor/Injure Official	Ballance

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

February 11, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **SENATE BILL 12 - HABITUAL DWI / ACTIVE TIME** - Senator Phillips

Senate Bill 12 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would require an active sentence for all convictions of habitual impaired driving (G.S. 20-138.5).

A person commits the offense of habitual impaired driving if he or she drives a vehicle while under the influence of an impairing substance and if, within seven years of the current offense, the person has had convictions of three or more offenses involving impaired driving.

Habitual impaired driving is a Class G felony, and under current law a judge may impose either an intermediate or an active punishment for prior record levels I-IV. When the judge imposes an intermediate punishment, the sentence is suspended and the judge imposes a period of supervised probation. For an intermediate punishment, one or more of the following conditions of probation must be imposed: special probation, electronic monitoring (house arrest), a residential program, or a day reporting center. Senate Bill 12 would eliminate the judge's option to impose these intermediate punishments for the habitual impaired driving offense, and the judge would be required to sentence the offender to an active prison term.

Information provided by the Sentencing Commission indicates that the Commission's current prison population projections assume that judge's will always give an active sentence for this offense, so they have calculated no additional impact for this bill. An incarceration fiscal note has been requested for this bill. The bill would become effective December 1, 1997 and would apply to offenses occurring on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class G felon. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest. (1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 12

Short Title: Habitual DWI/Active Time. (Public)

Sponsors: Senators Phillips; Albertson, Cochrane, Cooper, Dalton, Foxx, Gulley, Hoyle, Jenkins, Jordan, Kerr, Kinnaird, Lee, Martin of Guilford, Odom, Perdue, Rand, Reeves, Shaw of Cumberland, Warren, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO REQUIRE ACTIVE TIME FOR HABITUAL IMPAIRED DRIVING CONVICTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-138.5(b) reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a Class G felon. Notwithstanding the dispositions authorized in G.S. 15A-1340.17 for Class G felonies, the court shall impose an active term of imprisonment. The term of imprisonment shall be consistent with the durations specified for that class of offense and prior record level. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Agency

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

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

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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

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

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

February 11, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 15 - AGGRAVATING FACTOR/INJURE OFFICIAL** - Senator Ballance

Senate Bill 15 adds an offense resulting in serious injury to certain people as an aggravating factor for structured sentencing purposes. This bill was recommended by the N.C. Sentencing and Policy Advisory Commission.

This bill amends G.S. 15A-1340.16(d), which sets out factors that are to be considered as aggravating for sentencing purposes, by adding to subdivision (6) offenses resulting in serious injury to certain persons in addition to offenses committed against certain persons. This will allow the resulting serious injury to be considered as an aggravating factor even though the offense itself was not directed at the person injured. These certain persons include present or former law enforcement officers, Corrections employees, jailers, firepersons, EMT personnel, judges and justices, clerks of court, magistrates, prosecutors, jurors, and witnesses against the defendant, while these persons were engaged in the performance of their official duties or because of the exercise of their official duties.

A finding by the court that aggravating factors outweigh mitigation factors allows the court to sentence a defendant to greater time than would be permitted within the presumptive range of sentencing.

"Serious injury" is not defined in statute but has been interpreted by the courts in numerous cases. Whether an injury constitutes a "serious injury" has been held to be a jury question. "Serious injury" is "any physical injury that causes great pain and suffering." (**State v. Williams**, 29 NC App 24 (1976)). It has been held to mean physical or bodily injury, as well as mental injury. (**State v. Everhardt**, 326 NC 777 (1990)). Similar phrases appearing in the statutes include "serious bodily injury" and "serious personal injury". G.S. 14-32.4 - **Assault inflicting serious bodily injury** defines "serious bodily injury" as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

This bill becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 15

Short Title: Aggravating Factor/Injure Official. (Public)

Sponsors: Senators Ballance; Albertson, Dalton, Dannelly, Gulley, and Miller.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO ADD TO THE LIST OF AGGRAVATING FACTORS THAT CERTAIN PEOPLE WERE SERIOUSLY INJURED AS A RESULT OF THE OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. -- The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against <u>or resulted in serious injury to</u> a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness

against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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 2-11-97

S. B. No. 15 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)) WINNER
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by DELETING THE WORDS "RESULTED IN" AND SUBSTITUTING THE WORDS "PROXIMATELY CAUSED".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I/CONSTITUTION COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, February 11, 1997

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

FAVORABLE

S.B. **12** Habitual DWI/Active Time
Sequential Referral: None
Recommended Referral: Appropriations

FAVORABLE, AS AMENDED

S.B. **15** Aggravating Factor/Injure Official
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 2-11-97

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Digby	NC Academy of Trial Lawyers
Roslyn Sawicki	Lobbyist
Claire Gilkeson	Governor's Office
GEORGE REED	CHRISTIAN LIFE COUNCIL (BAPTIST STATE CONV)
Rob Hubitz	Sentencing Commissn
John Madler	Sentencing Commission
Peg Dorer	NCCDA
Lori Everhart	NC Citizen Action
[illegible]	DOC
C.M. Taylor	Rocky Mount Telegram
Fred Tuyn	WRAL-TV
Josh Bass	

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 2-11-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
PERRI MORGAN	NFIB
[signature]	CSC [signature]

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 13, 1997

The Senate Judiciary Committee met on Thursday, February 13, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members and guests.

Senator Jenkins was recognized to explain **Senate Bill 3** - AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

Senator Reeves moved to adopt a Proposed Committee Substitute for Senate Bill 3 for discussion. The motion carried by voice vote.

Senator Gulley moved to amend the Proposed Committee Substitute on Page 1, Line 13 by deleting the date "January 1, 1999," and substituting the words "when it becomes law,"; and on Page 1, Line 15 by deleting the date "1999" and substituting "1997". The motion carried by voice vote.

Senator Ballantine moved to amend the Proposed Committee Substitute on Page 1, Lines 11 & 12 by rewriting the lines to read: "After the expiration of the term for which the individual was elected to serve as a member of the General Assembly." The motion carried by voice vote.

Senator Rand moved to give the Proposed Committee Substitute a favorable report as amended and to roll it into a new Committee Substitute for Senate Bill 3. The motion carried by voice vote.

There being no further business, the meeting adjourned at 10:50 a.m.

Roy A. Cooper, III
Sen. Roy A. Cooper, III, Chairman

Susan M. Moore
Susan M. Moore, Committee Clerk

AGENDA
SENATE JUDICIARY COMMITTEE
February 13, 1997

SB 3	Lobbyist Waiting Period	Gulley

North Carolina General Assembly
Legislative Services Agency

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

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

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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

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

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

February 13, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 3 - LOBBYIST WAITING PERIOD** - Senator Jenkins.

The Proposed Committee Substitute for Senate Bill 3 prohibits a former legislator from being paid to be a lobbyist before the General Assembly for a period of one year after the end of the legislator's term. The restriction would apply to legislators serving terms beginning on or after January 1, 1999.

Section 1 of the bill adds a new section to Article 9A of Chapter 120 - **Lobbying** to prohibit a person who has served as a member of the General Assembly from acting as a lobbyist for a period of one year following the end of the legislative term. The term "lobbyist" is defined in G.S. 120-47.1(6) (copy attached) as a person hired or compensated to influence or attempt to influence legislative action or soliciting others to influence legislative action. A lobbyist does not include a person exempt from the lobbying statute in G.S. 120-47.8 (copy attached) which includes a person who expresses personal opinions on legislation, appears before the General Assembly by invitation or in response to legislative inquires, or who gives facts or recommendations to the person's own legislative delegation. A person whose compensation is merely reimbursement of actual travel and subsistence expense is not considered a lobbyist under this Article.

Section 2 of the bill makes this bill effective January 1, 1999 and specifies that it only applies to persons who serve legislative terms that begin on or after that date.

At least eight other states restrict former legislators from lobbying for some period of time. South Carolina, California, Pennsylvania, Hawaii, and Rhode Island prohibit lobbying for one year. New York, Louisiana and Florida prohibit lobbying for two years.

Based on limited research I could not find that the constitutionality of this type of statute has been tested, either on free speech, equal protection, or undue restraint of trade grounds.

§ 120-47.1. Definitions.

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1, effective January 1, 1992.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity.

(5) The term "lobbying" means:

a. Influencing or attempting to influence legislative action through direct oral or written communication with a member of the General Assembly; or

b. Solicitation of others by lobbyists to influence legislative action.

(6) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

(c) 1996 by Michie, a division of Reed Elsevier Inc.

§ 120-47.8. Persons exempted from provisions of Article.

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a lobbyist, solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist in connection with that or any other legislative matter.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to legislators on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1, effective January 1, 1992.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a lobbyist in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.

(1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3.)

(c) 1996 by Michie, a division of Reed Elsevier Inc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 3

Short Title: Lobbyist Waiting Period. (Public)

Sponsors: Senators Jenkins; Cooper, Dalton, Gulley, Hoyle, Kerr, Kinnaird, Martin of Guilford, Miller, Perdue, Rand, Reeves, Warren, Weinstein, and Wellons.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before former legislators may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual may be employed or retained or may act as a lobbyist within one year after having served as a member of either house of the General Assembly."

Section 2. This act becomes effective January 1, 1999, and applies only to individuals who leave office after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S3-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 3
THIS IS A DRAFT 12-FEB-97 16:46:20
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to: Judiciary

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-47.5A. Waiting period before former legislators may lobby.

Notwithstanding the provisions of G.S. 120-47.8, no individual may act as a lobbyist as defined in this Article within one year after the expiration of the term during which the individual served as a member of the General Assembly."

Section 2. This act becomes effective January 1, 1999, and applies to individuals who serve terms beginning on or after January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 3 PCS _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) OPOM
Sen.)

moves to amend the bill on page 2, line 13

( ) WHICH CHANGES THE TITLE

by DELETING THE DATE "JANUARY 1, 1999,"
AND SUBSTITUTING THE WORDS "WHEN IT
BECOMES LAW,";

AND ON PAGE 1, LINE 15
BY DELETING THE DATE "1999." AND
SUBSTITUTING "1997.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 3 PCS Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
Sen.) BALLANTINE

moves to amend the bill on page 1, line 11 + 12

by REWRITING THE LINES TO READ:

"AFTER THE EXPIRATION OF THE TERM FOR WHICH THE INDIVIDUAL WAS ELECTED TO SERVE AS A MEMBER OF THE GENERAL ASSEMBLY."

AND ON PAGE 1, LINE 14

BY DELETING THE WORD "WHO" AND SUBSTITUTING THE WORDS "ELECTED TO"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 2-13-97

Name of Committee **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
S Henri Johnson	McClees Consulting
Joe McClees	McClees Consulting
PETE MARTIN	Div. MHDDSAS
Lori Everhart	NC Citizen Action
PB Powell	AOC
DA Cameron	AOC
John Madden	Sentencing Commission
RW Lewis	
Lucius Pullen	ATTORNEY
Lee Rubert	CJPC
[illegible]	AOC
M.L. Mann	SSL

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 2-13-97

Name of Committee **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Pat Yancey	State Council for Social Legislation
Claire Hilliard	Governor's Office
Bernard Allen	Secy. of State

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 18, 1997

The Senate Judiciary Committee met on Tuesday, February 18, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed Committee members and guests.

Senator Hartsell was recognized to explain **Senate Bill 86** - AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Ballance moved to give the bill a favorable report. The motion carried by voice vote.

Senator Miller moved to reconsider the vote taken on **Senate Bill 3** on February 13, 1997 - AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS. The motion carried by voice vote.

Senator Miller moved to adopt a Proposed Committee Substitute for Senate Bill 3 for discussion. The motion carried by voice vote.

Walker Reagan, Committee Counsel, was recognized to explain the Proposed Committee Substitute.

Senator Miller moved to amend the Proposed Committee Substitute on Page 1, Line 14. (See attached amendment.) The motion carried by voice vote.

Senator Hartsell moved to amend the Proposed Committee Substitute on Page 1, Line 3; Page 1, Line 7; Page 1, Lines 9 & 10; Page 1, Line 12 and on Page 1, Line 13. (See attached amendment.)

After Committee discussion, Senator Hartsell withdrew the motion.

Senator Miller moved to give the Proposed Committee Substitute a favorable report and roll it into a new Committee Substitute. The motion carried by voice vote.

Senator Miller was recognized to discuss **Senate Bill 9** - AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

Robin Lubitz, with the Sentencing Commission, was recognized to answer questions from the Committee.

Senator Rand moved to send Senate Bill 9 and the other Sentencing Commission bills to a subcommittee. The motion carried by voice vote.

There being no further business, the meeting adjourned at 11:00 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 18,1997

AGENDA

SB 7	Increase Drug Penalties	Cooper
SB 9	Embezzlement/Increase Penalty	Miller
SB 10	Accessory After the Fact/Penalty	Reeves
SB 11	Voluntary Manslaughter/Class D Felony	Gulley
SB 86	Fast Track Technical Amend.	Hartsell

North Carolina General Assembly
Legislative Services Agency

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

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

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

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

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

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

February 18, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL ~~87~~ 86 - FAST-TRACK TECHNICAL AMENDMENTS** - Senator Hartsell.

Senate Bill 87 is recommended by the General Statutes Commission. This bill would make two technical corrections to effect legislative intent to allow two statutes previously adopted by the General Assembly to become effective.

Section 1 of the bill amends G.S. 1-597 to conform with the current terminology used by the U.S. Postal Service. This statutory section governs the regulations for newspaper publication of legal notices and announcements. The U.S. Postal Service no longer offers "second-class" mail as specified in this statute, but now offers "Periodicals class" mail for those items previously eligible for "second-class" mail. In order to legally prove publication in accordance with statute, the publisher of the newspaper must give an affidavit that the legal matter has been published according to statute. Since "second-class" mail no longer exists, the publisher cannot swear that the newspaper was mailed as "second-class matter" as the statute specifies. This change would permit affidavits consistent with actual practice.

Section 2 corrects an incorrect statutory citation in the prefatory language of a section in the 1996 Budget bill. The statutory section intended to be amended was a section of Chapter 14 not Chapter 143. Because of the error the change to Chapter 14 has not been codified. The 1996 amendment would have added firefighters to a list of medical personnel against whom an assault would be punished as a Class A1 misdemeanor.

The bill would become effective when it becomes law.

minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

(d) This section becomes effective December 1, 1996.

Requested by: Senators Ballance, Cooper, Rand, Representatives Decker, Justus, Thompson, Kiser

CLASS F FELONY OFFENSE TO ASSAULT A LAW ENFORCEMENT OFFICER AND INFLICT SERIOUS BODILY INJURY/CREATE A NEW CRIMINAL OFFENSE OF ASSAULTING FIREFIGHTER

Sec. 20.14B. (a) Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.7. Assault on a law enforcement officer.

Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement officer while the law enforcement officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the law enforcement officer."

(b) G.S. 143-34.6 reads as rewritten:

"**§ 14-34.6. Assault or affray on a firefighter; an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.**

(a) A person is guilty of a Class A1 misdemeanor if the person commits an assault or an affray on any of the following persons who are discharging or attempting to discharge their official duties:

(1) ~~an~~ An emergency medical ~~technician,~~ technician.

(2) An ambulance ~~attendant,~~ attendant.

(3) An emergency department ~~nurse, or~~ nurse.

(4) An emergency department ~~physician while the technician, attendant, nurse, or physician is discharging or attempting to discharge official duties.~~ physician.

(5) A firefighter.

(b) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person violates subsection (a) of this section and (i) inflicts serious bodily injury or (ii) uses a deadly weapon other than a firearm.

(c) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person violates subsection (a) of this section and uses a firearm."

(c) This section becomes effective December 1, 1996, and applies to offenses committed on or after that date.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

ELIMINATE WAIVER OF PRELIMINARY HEARINGS IN PAROLE AND POST-RELEASE SUPERVISION REVOCATION PROCEEDINGS

Sec. 20.15. (a) G.S. 15A-1376 reads as rewritten:

"(b) When and Where Preliminary Hearing on Parole Violation Required. -- Unless the hearing required by subsection (e) is first held ~~or the parolee waives the~~

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 86*

Short Title: Fast-Track Technical Amendments. (Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-597 reads as rewritten:

"**§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails as ~~second-class matter~~ in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied

with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

Section 2. The prefatory language of subsection (b) of Section 20.14B of Chapter 18 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"(b) G.S. ~~143-34.6~~ 14-34.6 reads as rewritten:".

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

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: February 17, 1997

RE: Senate Bill 86 (Fast-Track Technical Amendments)

General Comments

The General Statutes Commission (Commission) customarily recommends a technical amendments bill that makes technical corrections such as fixing typographical, grammatical, and redlining errors and updating, correcting, and conforming statutory references, proper names, and obsolete expressions in various sections of the statutes. Because this process is a continuous one, the general technical corrections bill is usually one of the last bills of the session to be ratified. In reviewing possible technical corrections for the 1997 session, the Commission identified two that would benefit from immediate ratification instead of ratification late in the session. It therefore decided to introduce a separate bill containing these two amendments.

Specific Comments

Section 1. This section amends G.S. 1-597 to update the reference to "second-class matter". The United States Postal Service recently changed the name of its second-class mail classification to "Periodicals". It also made other changes, primarily to the manner in which periodicals are processed, but there does not appear to have been a substantive change in the types of material that qualify for this type of permit.

The urgency connected with this correction is caused by a different statute, G.S. 1-598, which requires the owner or another designated officer or employee of a newspaper that accepts legal advertising to execute a written statement under oath that the newspaper meets the requirements of G.S. 1-597. At present, it is impossible for such a person to swear truthfully that a newspaper literally meets all of the statutory requirements.

Section 2. This section corrects a typographical error in an amendment in Chapter 18 of the 1996 Session Laws (Second Extra Session). The opening language of subsection (b) of

Section 20.14B of that act began with the words, "G.S. 143-34.6 reads as rewritten:", but the text actually set out and shown as being amended was the text of G.S. 14-34.6. The amendment increased the penalty for assaulting a firefighter in the performance of duty. The Commission considered this correction urgent because any sentence imposing the enhanced penalty would be subject to challenge because of the discrepancy, and the effective date for the amendment, December 1, 1996, has already passed.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I/CONSTITUTION COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, February 18, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **86** Fast-Track Technical Amendments
Sequential Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S D

S3-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 3
THIS IS A DRAFT 17-FEB-97 16:04:59
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-47.5A. Waiting period before former legislators may lobby.

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve as a member of the General Assembly."

Section 2. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 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 2, line 11,

by _____

_____ ibed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or ~~retained~~ retained; an indication of whether the registrant has served as a member of the General Assembly, and if so, the period in which the registrant served, and a general description of the matters on which the registrant expects to act as a lobbyist.

SECTION 3. This Act is _____ .com- _____ (LRV)."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 3

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S3-ARU-003

S3-CSRU-002

Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]
"Second Edition"

Senator Hartsell

moves to amend the bill on page 1, line 3,
by rewriting the line to read:
"LEGISLATORS, FORMER MEMBERS OF THE COUNCIL OF STATE, AND FORMER MEMBERS OF THE GOVERNOR'S CABINET MAY BECOME LOBBYISTS.";

and, on page 1, line 7,
by rewriting the line to read:
"§ 120-47.5A. Waiting period before certain former state officials may lobby.";

and, DELETING on page 1, line 8, 9, + 10 ASSEMBLY AND SUBSTITUTING THE
by ~~inserting~~ ~~between~~ the words "~~individual~~" ~~and~~ "~~may~~" the words ~~who has served as a member of the General~~ Assembly, a member of the Council of State, or a head of an executive department of State government";

and, on page 1, line 12,
by deleting the word "expiration" and substituting the word "end";

and, on page 1, line 13,
by rewriting the line to read:
"appointed to serve in that position.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____ (withdrawn)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, February 19, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 3 Lobbyist Waiting Period

Draft Number:	PCS6542
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 9

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors: Senators Miller; Albertson, Cochrane, Cooper, Dalton, Gulley, Jordan, Lee, Lucas, Odom, Perdue, Plyler, Rand, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section [G.S. 14-75], by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H felon.~~ guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. Larceny or embezzlement by servants and other employees of money, goods, or other chattels, or any of the articles, securities, or

choses in action mentioned in G.S. 14-75, with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Larceny or embezzlement by servants and other employees of money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 2. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of property with the value of one hundred thousand dollars ($100,000) or more, received by virtue of office or employment, is a Class C felony. Embezzlement of property with the value of less than one hundred thousand dollars ($100,000), received by virtue of office or employment, is a Class H felony."

Section 3. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of State property with the value of one hundred thousand dollars ($100,000) or more by public officers and employees is a Class C felony. Embezzlement of State property with the value of less than one hundred thousand dollars ($100,000) by public officers and employees is a Class F felony."

Section 4. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

If an officer, agent, or employee of an entity listed below, or a person having or holding money or property in trust for one of the listed entities, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of money or property with the value of one hundred thousand dollars ($100,000) or more by public officers and trustees is

a Class C felony. Embezzlement of money or property with the value of less than one hundred thousand dollars ($100,000) by public officers and trustees is a Class F felony. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of money, funds, securities, or other property with the value of one hundred thousand dollars ($100,000) or more by public officers and trustees is a Class C felony. Embezzlement of money, funds, securities, or other property with the value of less than one hundred thousand dollars ($100,000) by public officers and trustees is a Class F felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

Section 5. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a ~~Class H~~ felony. Embezzlement by treasurers of charitable and religious organizations of money with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by treasurers of charitable and religious organizations of money with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 6. G.S. 14-94 reads as rewritten:

"**§ 14-94. Embezzlement by officers of railroad companies.**

If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be punished as a ~~Class H~~ felon. Embezzlement by officers of railroad companies of money, bonds, or other valuable funds or securities with the

value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by officers of railroad companies of money, bonds, or other valuable funds or securities with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 7. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~Class H~~ felony. Appropriation of partnership funds with the value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony."

Section 8. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement by a surviving partner of property, money, or effects with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by a surviving partner of property, money, or effects with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 9. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~ felon. Embezzlement of taxes with the value of one hundred thousand dollars ($100,000) or more by officers is a Class C felony. Embezzlement of taxes with the value of less than one hundred thousand dollars ($100,000) by officers is a Class F felony."

Section 10. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a Class H felon.~~ felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of

value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. Obtaining property with the value of one hundred thousand dollars ($100,000) or more by false pretenses is a Class C felony. Obtaining property with the value of less than one hundred thousand dollars ($100,000) by false pretenses is a Class H felony."

Section 11. G.S. 53-129 reads as rewritten:

"**§ 53-129. Misapplication, embezzlement of funds, etc.**

Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of money, funds, credit, or property with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement of money, funds, credit, or property with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 12. G.S. 58-2-162 reads as rewritten:

"**§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be ~~punished as a~~

~~Class H felon.~~ guilty of a felony. Embezzlement by insurance agents, brokers, or administrators of money, negotiable instrument, or other consideration with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by insurance agents, brokers, or administrators of money, negotiable instrument, or other consideration with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 13. G.S. 90-210.70(a) reads as rewritten:

"(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of preneed funeral funds with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement of preneed funeral funds with the value of less than one hundred thousand dollars ($100,000) is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked."

Section 14. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 2-18-97

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	Sentencing Commission
Rob Lubitz	"
Peg Doren	NCCDA
Robert Rothbart	M.D. of day
[illegible]	[illegible]
Bindu Rao	Common Sense Foundation
Lori Everhart	NC Citizen Action
Amanda Digby	NC Academy of Trial Lawyers
Laura Hartsell	MCIC
Nancy Bradley	NCCBH
[illegible]	NCTA
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 2-18-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Willie Riddick	NOR
Lyman Cooper	CSX Corp.
Ann Chaffin	NCAWA
Joan Marchetta	Poyner + Spruill
Glenna Wiener	EHS
Jane O. Gray	DOJ

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 25, 1997

The Senate Judiciary Committee met on Tuesday, February 25, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. All Committee members was present.

Senator Cooper called the meeting to order and welcomed members and guests.

Senator Cooper announced that Brad Miller would be Chairman of the Subcommittee on Criminal Laws. Members named to the Subcommittee are: Senators Ballance, Ballantine, Hartsell and Gulley. The following Senate bills were assigned to the Subcommittee:

SB 7	Increase Drug Penalties
SB 8	Structured Sentencing Amendments
SB 9	Embezzlement/Increase Penalty
SB 10	Accessory after the Fact/Penalty
SB 11	Voluntary Manslaughter/Class D Felony
SB 14	Reclassify Prison Offenses
SB 29	Increase Penalty/Pyramid Schemes
SB 46	Felony to Shoot a Horse
SB 75	Trespass/Theft of Pine Straw
SB 102	Bomb Threat/Felony

The Subcommittee will be responsible for determining which of these bills should be sent to Appropriations and also to determine the priority of the bills and report back to the full Judiciary Committee.

Senator Rand was recognized to explain **Senate Bill 95** - AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Hartsell was recognized to explain **Senate Bill 79** - AN ACT TO REPEAL MORE ANTIQUATED LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Odom moved to give the bill a favorable report. The motion carried by voice vote.

Senator Condor was recognized to explain **Senate Bill 2** - AN ACT TO PROVIDE FOR A LATER PRIMARY DATE.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 2 for discussion. The motion carried by voice vote.

Senator Winner offered an amendment to the Proposed Committee Substitute on Page 15, Lines 42-44. This amendment will be drafted by Bill Gilkeson, Committee Co-Counsel, and brought back to the Committee for consideration on Thursday, February 27, 1997.

Senator Cooper asked the Committee to consider any amendments they would like to have drafted and bring them back to the Committee on Thursday for consideration. The Proposed Committee Substitute will be voted on at that time.

There being no further business, the meeting adjourned at 11:00 a.m.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 25,1997

AGENDA

SB 2	Change Primary Date (1)	Gulley
SB 13	Change Primary Date (2)	Conder
SB 30	Speeding in a Work Zone	Jordan
SB 55	Change Primary Date (3)	Horton
SB 68	Federal Driver's Privacy Act	Hoyle
SB 79	Repeal More Antiquated Laws	Hartsell
SB 95	Validate Notarial Acts	Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 95

Short Title: Validate Notarial Acts. (Public)

Sponsors: Senators Rand; Ballance, Blust, Cooper, Dalton, Hartsell, Horton, Kinnaird, Miller, Odom, Reeves, Soles, Wellons, and Winner.

Referred to: Judiciary.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~October 1, 1991.~~ December 31, 1996."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 79

Short Title: Repeal More Antiquated Laws. (Public)

Sponsors: Senators Hartsell; and Jordan.

Referred to: Judiciary.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL MORE ANTIQUATED LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 11-11 reads as rewritten:

"**§ 11-11. Oaths of sundry persons; forms.**

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of . . . . . .); I will, in the execution of my

office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I, ..., do solemnly swear that I will discharge the duties of the office of clerk of the Supreme Court without prejudice, affection, favor, or partiality, according to law and to the best of my skill and ability, so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of . . . . . .; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State; and I do further swear that I will execute the office of clerk of the superior court for the county of . . . . . without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family, according to law, and with your best skill and ability; so help you, God.

Commissioners Dividing and Allotting Real Estate

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

~~Entry-Taker~~

~~I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of entry-taker for the county of . . . . . according to law; so help me, God.~~

Executor

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying his debts and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

Grand Jury--Foreman of

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unpresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Grand Jury--Officer of

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

Jury--Officer of

You swear (or affirm) that you will keep every person sworn on this jury in some private and convenient place when in your charge. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Oath for Petit Juror

You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality try all issues in civil or criminal actions that come before you and give true verdicts according to the evidence, so help you, God.

Justice, Judge, or Magistrate of the General Court of Justice

I, ..., do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of . . . . . of the . . . . . Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of . . . . . ., in all things according to law; so help me, God.

Secretary of State

I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of Secretary of State of the State of North Carolina, during my continuance in office, according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of . . . . . county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of . . . . . ., according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of . . . . . ., in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the State and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

Witness before a Legislative Committee or Commission

You swear (or affirm) that the testimony you shall give to the committee (or commission) shall be the truth, the whole truth, and nothing but the truth; so help you, God.

General Oath

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of . . . . . according to the best of my skill and ability, according to law; so help me, God."

Section 2. G.S. 58-76-5 reads as rewritten:

"**§ 58-76-5. Liability and right of action on official bonds.**

Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, ~~entry-taker,~~ surveyor, sheriff, coroner, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office."

Section 3. G.S. 147-12(11) reads as rewritten:

"(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. ~~20-16.2(h),~~ 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard

remove the offending vehicles or other causes of the blockade from the emergency area."

Section 4. This act is effective when it becomes law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: February 24, 1997

RE: Senate Bill 79 (Repeal More Antiquated Laws)

General Comments

Senate Bill 79 is the result of a study assigned to the General Statutes Commission last year by the General Assembly in Chapter 17 of the 1996 Session Laws, Second Extra Session. Section 9.1 of Chapter 17 required the Commission to study and identify antiquated laws in the North Carolina General Statutes and make recommendations regarding removal of those laws from the books.

The Commission made requests for the identification of antiquated laws in the North Carolina General Statutes to the staff of the Attorney General's Office, the Research Division of the General Assembly, the Legislative Bill Drafting Division of the General Assembly, and the Institute of Government. In addition, the following organizations agreed to publish a notice of the study along with a request for the identification of antiquated laws in their respective publications: The North Carolina State Bar, North Carolina Bar Association, North Carolina Lawyers Weekly, North Carolina League of Municipalities, and North Carolina Association of County Commissioners.

As is set forth more fully in the Commission's 1997 Report on Antiquated Laws in the North Carolina General Statutes, filed January 29, 1997, the Commission received very few suggestions for the removal of perceived antiquated laws, and only some were found to warrant recommendations to the General Assembly. While Senate Bill 79 is recommended pursuant to the study authorized by the General Assembly, the Commission identifies antiquated laws in the North Carolina General Statutes and makes recommendations regarding their removal on a

continuing basis pursuant to its authority under G.S. 164-13.

Specific Comments

Section 1 amends G.S. 11-11 (Oaths of sundry persons; forms) to delete the oath of office for an "Entry-Taker." An entry-taker was the county official who actually recorded "entries," or claims, made by persons obtaining land under the State land grant program prior to 1959. The statutory provisions covering the land grant program and establishing the county office of "Entry-Taker" were deleted when Chapter 146 of the General Statutes (State Lands) was revised in 1959.

Section 2 amends G.S. 58-76-5 (Liability and right of action on official bonds) to delete the reference to "entry taker." The statute, in pertinent part, renders an "entry taker" liable on the entry-taker's official bond to one injured by the entry-taker's neglect, misconduct, or misbehavior in office. Since the county office of entry-taker no longer exists, the reference to "entry taker" in G.S. 58-76-5 should be deleted.

Section 3 amends G.S. 147-12 (Powers and duties of Governor) in Subdivision (11) to change the reference to repealed "G.S. 20-16.2(h)," which defined the term "public vehicular area," to the reference "G.S. 20-4.01(32)," which presently defines the term "public vehicular area." The present definition is somewhat broader in scope than the repealed definition.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 2

Short Title: Change Primary Date. (Public)

Sponsors: Senators Gulley; Albertson, Ballance, Conder, Cooper, Dalton, Dannelly, Hoyle, Jordan, Kerr, Lee, Lucas, Miller, Odom, Perdue, Phillips, Plyler, Rand, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A LATER PRIMARY DATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-1(b) reads as rewritten:

"(b) On ~~Tuesday next after the first Monday in May~~ the second Tuesday after the first Monday in September preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices."

Section 2. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~four~~ three weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second

primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

Section 3. (a) G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

(b) G.S. 163-323(b) reads as rewritten:

"(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the election:

Judges of the superior courts."

Section 4. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the ~~first day of July prior to the general election,~~ day of the primary election under G.S. 163-1(b), the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for ~~State,~~

~~congressional, and national~~ offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party."

Section 5. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 6. G.S. 163-123(c) reads as rewritten:

"(c) Petitions for Write-in Candidacy. -- An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon ~~on the 90th day before the general election.~~ the day of the primary under G.S. 163-1(b). They shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which

the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be

signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1)."

Section 7. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county

executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. ~~If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.~~

In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 8. Article 20 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-226.4. Special deadlines for general election.**

Notwithstanding any other provision of this Article or Article 21 of this Chapter, the State Board of Elections shall provide that absentee ballots shall be available for the primary or general election at the earliest time practicable and may provide an alternative schedule for meetings of the county board of elections under G.S. 163-230 to accommodate the revised schedule."

Section 9. G.S. 163-179.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

(1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or

(2) Has received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by noon on the ~~second~~ day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount."

Section 10. G.S. 163-192.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

(1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or

(2) Received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the ~~eighth~~ sixth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within ~~48~~ 24 hours of notification."

Section 11. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, they shall instead take office on the same day in October after the primary, and the terms of any such member which would otherwise expire in July of 1998 or July of 2000 are extended accordingly.

Section 12. G.S. 163-111(c) reads as rewritten:

"(c) Procedure for Requesting Second Primary. --

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-

Director of the State Board of Elections no later than 12:00 noon on the ~~seventh~~ sixth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a ~~48-hour~~ 24-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no later than 12:00 noon on the ~~seventh~~ sixth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary."

Section 13. G.S. 163-111(d) reads as rewritten:

"(d) Tie Votes; How Determined. --

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of

elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within ~~three days~~ one day after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within ~~three days~~ one day after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within ~~three days~~ one day after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed ~~three-day~~ period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the

candidate who received the highest vote and the remaining candidate who received the second highest vote."

Section 14. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 2
Proposed Committee Substitute -- S1-PCSRR-003

Short Title: Shorter Election Year. (Public)

Sponsors:

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A LATER PRIMARY DATE; TO ABOLISH THE RUNOFF PRIMARY; AND TO CHANGE THE DATE OF THE PRESIDENTIAL PRIMARY.

The General Assembly of North Carolina enacts:

PART 1. LATER PRIMARY DATE.

Section 1. G.S. 163-1(b) reads as rewritten:

"(b) On ~~Tuesday next after the first Monday in May~~ the second Tuesday after the first Monday in September preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices."

Section 2. (a) G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

Governor

Lieutenant Governor

All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

(b) G.S. 163-323(b) reads as rewritten:

"(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the election:

Judges of the superior courts."

Section 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the ~~first day of July prior to the general election,~~ day of the primary election under G.S. 163-1(b), the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for ~~State, congressional, and national~~ offices in the ensuing general election. The State Board of Elections shall print names thus

certified on the appropriate ballots as the nominees of the new party."

Section 4. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August

preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified

in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 5. G.S. 163-123(c) reads as rewritten:

"(c) Petitions for Write-in Candidacy. -- An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon ~~on the 90th day before the general election.~~ the day of the primary under G.S. 163-1(b). They shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification

within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the

county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1)."

Section 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those

members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. ~~If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.~~

In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 7. Article 20 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-226.4. Special deadlines for general election.**

Notwithstanding any other provision of this Article or Article 21 of this Chapter, the State Board of Elections shall provide

that absentee ballots shall be available for the primary or general election at the earliest time practicable and may provide an alternative schedule for meetings of the county board of elections under G.S. 163-230 to accommodate the revised schedule."

PART 2. ABOLISH SECOND PRIMARY.

Section 8. G.S. 163-111 reads as rewritten:

"**§ 163-111. Determination of primary results~~; second primaries~~.**

~~(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. -- Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:~~

~~(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.~~

~~(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.~~

~~(b) Right to Demand Second Primary. -- If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a~~

~~second primary, subject to the conditions specified in this section, shall be held:~~

~~(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.~~

~~(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.~~

~~(c) Procedure for Requesting Second Primary.~~

~~(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State~~

~~Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:~~

~~Governor,~~
~~Lieutenant Governor,~~
~~All State executive officers,~~
~~Justices, Judges, or District Attorneys of the General Court of Justice, other than superior court judge,~~
~~United States Senators,~~
~~Members of the United States House of Representatives,~~
~~State Senators in multi-county senatorial districts, and~~
~~Members of the State House of Representatives in multi-county representative districts.~~

~~(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:~~

~~State Senators in single-county senatorial districts,~~
~~Members of the State House of Representatives in single-county representative districts, and~~
~~All county officers.~~

~~(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary~~

~~has been requested and of the date of the second primary.~~

~~(d) Tie Votes; How Determined. --~~

~~(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.~~

~~(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the~~

~~offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.~~

~~(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.~~

~~(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.~~

~~There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.~~

~~(f) No Third Primary Permitted. -- In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between~~

~~two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114.~~

(g) Nominations in primary elections shall be determined as follows:

(1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest number of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same number of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest number of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same number of votes, select the party nominee in accordance with G.S. 163-114."

Section 9. G.S. 163-227.1 is repealed.

Section 10. G.S. 163-227.3 reads as rewritten:

"**§ 163-227.3. Date by which absentee ballots must be available for voting.**

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence.

~~(b) Second Primary. -- The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the~~

~~State Board, as quickly as possible after the ballot information has been determined.~~"

Section 11. G.S. 163-278.6(8) reads as rewritten:

"(8) The term 'election' means any general or special election, a ~~first or second~~ primary, a runoff election, or an election to fill a vacancy. The term 'election' shall not include any local or statewide referendum."

Section 12. G.S. 163-278.9(a)(3) reads as rewritten:

"(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. ~~If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~"

Section 13. G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any primary~~, second primary,~~ or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election."

Section 14. G.S. 163-278.40B(2) reads as rewritten:

"(2) Pre-election Report. -- The treasurer shall file a report 10 days prior to the election~~, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary~~."

Section 15. G.S. 163-279(a)(2) reads as rewritten:

"(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in ~~1973~~ 1999 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, ~~the first primary shall be held on the sixth Tuesday before the election, and the second primary, if required, shall be held on the third~~

~~Tuesday before the election~~ and the primary shall be held on the fourth Tuesday before the elections.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November."

Section 16. G.S. 163-291 reads as rewritten:

"**§ 163-291. Partisan primaries and elections.**

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a

minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary ~~and second primary~~ shall be held on the third day (Sunday excepted) following the primary ~~or second primary~~. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

~~(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary.~~"

Section 17. G.S. 163-179.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who~~:~~

~~(1)~~ ~~Has~~ has received the number of votes necessary to be declared nominated for an office in a primary election with a majority~~; or~~

~~(2) Has received the number of votes necessary to be declared nominated for an office in a second primary election~~

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount."

Section 18. G.S. 163-192.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who~~:~~

~~(1)~~ ~~Has~~ has received the number of votes necessary to be declared nominated for an office in a primary election with a majority~~; or~~

~~(2) Received the number of votes necessary to be declared nominated for an office in a second primary election~~

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification."

Section 19. G.S. 163-82.6(d) reads as rewritten:

"(d) Instances When Person May Register and Vote on Election Day. -- If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election-day applications to register. ~~No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.~~ For purposes of this subsection, persons who 'become qualified to register and vote' during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period."

Section 20. G.S. 163-82.17(a) reads as rewritten:

"(a) Registrant's Duty to Report. -- Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163-82.6 before the election, indicate the change on an application form as described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a ~~primary, second primary, or special~~ primary, special, or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6."

PART 3. MOVE PRESIDENTIAL PRIMARY.

Section 21. G.S. 163-213.2 reads as rewritten:

"§ 163-213.2. (For effective date see note) Primary to be held; date; qualifications and registration of voters.

On the Tuesday after the first Monday in ~~May, 1992,~~ March, 2000, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than ~~the last day for making application to register under G.S. 163-67~~ the twenty-fifth day prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

PART 4. EDGECOMBE COUNTY BOARD OF EDUCATION.

Section 22. Section 3 of Chapter 809 of the 1991 Session Laws reads as rewritten:

"Sec. 3. Elections shall be determined by a ~~substantial~~ plurality as provided in G.S. ~~163-111 for party primaries.~~ 163-292. Any runoff, if needed, shall be held at the same time as the second primary for county offices."

PART 5. ORANGE COUNTY BOARD OF EDUCATION

Section 23. (a) Section 1 of Chapter 603, Session Laws of 1977, reads as rewritten:

"Section 1. The Orange County Board of Education shall be elected on a nonpartisan basis at the time of the primary election in 1978 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation. The ~~election and runoff~~ plurality election method shall be used with the results determined as provided in ~~G.S. 163-293,~~ G.S. 163-292 and absentee ballots shall be permitted. Except as may be otherwise provided herein, the elections shall be conducted according to the provisions of Chapter 163 of the General Statutes governing elections for county officers."

(b) Section 6 of Chapter 603, Session Laws of 1977, as enacted by Section 2 of Chapter 1214, Session Laws of 1981, reads as rewritten:

"Sec. 6. ~~If a runoff election is required, the runoff election shall be held at the time for the second primary as provided in G.S. 163-111(e) and those~~ Those persons elected members of Orange County Board of Education shall qualify and take office on the first Monday of the month following their election."

PART 6. YANCEY COUNTY BOARD OF EDUCATION

Section 24. Section 1 of Chapter 203, Session Laws of 1973, as rewritten by Section 1 of Chapter 135, Session Laws of 1985, reads as rewritten:

"Section 1. The Yancey County Board of Education shall consist of five members who shall be elected by the voters of Yancey County, for staggered terms of four years, in a nonpartisan election as herein provided.

Beginning with the primary election for county offices to be held in 1974, there shall be a nonpartisan election to elect successors to the present members of the school board whose terms expire in 1974, and every two years thereafter, as the terms of the members expire.

The nonpartisan ~~election and runoff~~ plurality election method shall be used with the results determined as provided in ~~G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e).~~ G.S. 163-292."

PART 7. OMNIBUS LOCAL ACT AMENDMENTS

Section 25. Any local act which provides for nonpartisan election of a county board of education on the date of the partisan primary under G.S. 163-1, with a nonpartisan runoff election on the date of the second primary, is amended to provide that the election is determined by the nonpartisan plurality method as provided by G.S. 163-292.

Section 26. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, they shall instead take office on the same day in October after the primary, and the terms of any such member which would otherwise expire in July of 1998 or July of 2000 are extended accordingly.

Section 27. Any local acts in conflict with this act are repealed to the extent of the conflict.

Section 28. This act becomes effective with respect to elections held on or after January 1, 1998.

PRESIDENTIAL

Nominating Season at a Glance - 1996

	Date of Main GOP Event	Delegate Count D	Delegate Count R	Form of Delegate Selection	GOP Delegate Allocation
Alabama	June 4	66	40	Open Primary	TBD
Alaska	Jan. 26-29	19	19	Closed Caucus (D) / Open Caucus(R)*	NFS
Arizona	Feb. 27	52	39	Open Caucus(D)* / Closed Primary(R)	WTA
Arkansas	May 21	48	20	Open Primary	PR
California	March 26	423	163	Closed Primary	WTA
Colorado	March 5	58	27	Open Primary*	PR
Connecticut	March 5	65	27	Closed Primary	TBD
Delaware	Feb. 24	21	12	Closed Primary	WTA
District of Columbia	May 7	38	14	Closed Primary	WTA
Florida	March 12	177	98	Closed Primary	WTA
Georgia	March 5	91	42	Open Primary	WTA
Hawaii	Jan. 25-31	30	14	Closed Caucus	NFS
Idaho	May 28	24	23	Open Caucus(D) / Open Primary(R)	PR
Illinois	March 19	194	69	Open Primary	DE
Indiana	May 7	89	52	Open Primary	WTA
Iowa	Feb. 12	56	25	Open Caucus*	NFS
Kansas	April 2	41	31	Open Primary*	TBD
Kentucky	May 28	61	26	Closed Primary	PR
Louisiana	Feb. 6	75	28	Closed Caucus(R) / Closed Primary	NFS / WTA
Maine	March 5	32	15	Open Primary*	TBD
Maryland	March 5	85	32	Closed Primary	WTA
Massachusetts	March 5	114	37	Open Primary*	WTA
Michigan	March 19	158	57	Open Caucus (D) / Open Primary (R)	PR
Minnesota	March 5	92	33	Open Caucus	NFS
Mississippi	March 12	49	32	Open Primary	WTA
Missouri	March 9	93	36	Open Caucus	NFS
Montana	June 4	25	14	Open Primary (D) / Open Caucus (R)	NFS
Nebraska	May 14	33	24	Open Primary*	DE
Nevada	March	27	14	Closed Caucus	NFS
New Hampshire	Feb. 20	26	16	Open Primary*	PR
New Jersey	June 4	120	48	Open Primary*	DE
New Mexico	June 4	34	18	Closed Primary	PR
New York	March 7	288	102	Closed Primary	DE
North Carolina	May 7	98	58	Closed Primary(D) / Open Primary(R)*	TBD
North Dakota	Feb. 27	22	18	Open Caucus (D) / Open Primary (R)	PR
Ohio	March 19	171	67	Open Primary	WTA
Oklahoma	March 12	53	38	Closed Primary	WTA
Oregon	March 12	56	23	Closed Primary	PR
Pennsylvania	April 23	195	73	Closed Primary	DE
Rhode Island	March 5	31	16	Open Primary*	PR
South Carolina	March 2	52	37	Open Caucus (D) / Open Primary (R)	WTA
South Dakota	Feb. 27	23	18	Closed Primary	PR
Tennessee	March 12	83	37	Open Primary	WTA / PR
Texas	March 12	230	123	Open Caucus (D) / Open Primary	WTA / PR
Utah	March 25	30	28	Open Caucus	NFS
Vermont	March 5	22	12	Open Primary	WTA
Virginia	April 13	96	53	Open Caucus	NFS
Washington	March 26	91	36	Open Caucus (D) / Open Primary (R)	PR
West Virginia	May 14	42	18	Closed Primary(D) / Open Primary(R)*	DE
Wisconsin	March 19	93	36	Open Primary	WTA
Wyoming	March 23	19	20	Closed Caucus	NFS
Puerto Rico	March 3	58	14	Open Primary	WTA
U.S. Territories		16	12		
Democrats Abroad		9			
Unassigned		1			
TOTAL		**4,295**	**1,984**		

** Independents or voters willing to switch parties may participate; voters registered by party may participate only in their party's primary or caucus.*

NOTE: Democrats require proportional representation in allocating delegates. Republicans allow a variety of methods:

WTA — winner-take-all; all delegates go to the statewide winner or are split between the statewide winner and each district winner.

DE — direct election of delegates (preference vote for candidates is non-binding).

PR — proportional representation; delegates divided to reflect candidates' share of the vote (thresholds vary from state to state).

NFS — no formal system; determined by participants in caucus process.

TBD — to be determined.

OVER

GROUPS OF PRESIDENTIAL PRIMARIES – 1996

February

New Hampshire Feb. 20
Delaware Feb. 24
Arizona Feb. 27
North Dakota Feb. 27
South Dakota Feb. 27

"Junior Tuesday" Week – First Week of March

South Carolina March 2
Colorado March 5
Connecticut March 5
Georgia March 5
Maine March 5
Maryland March 5
Massachusetts March 5
Minnesota March 5
Rhode Island March 5
Vermont March 5
New York March 7

"Super Tuesday" Week – Second Week of March

Florida March 12
Mississippi March 12
Oklahoma March 12
Oregon March 12 (ballot held by mail)
Tennessee March 12
Texas March 12

"Big Ten Tuesday" Third Week of March

Illinois March 19
Michigan March 19
Ohio March 19
Wisconsin March 19

California and Beyond

California, Washington March 26
Kansas April 2
Pennsylvania April 23

D.C., Indiana, North Carolina May 7
Nebraska, W. Va. May 14
Arkansas May 21

Idaho, Kentucky May 28
Alabama, Montana, N.J., N.M. June 4

(OVER)

COMPARISON OF BILLS SHORTENING THE ELECTION YEAR.

	Current Law	PCS for SB 2	SB 2 as introduced	SB 13	SB 55
Candidate Filing	1st Monday in January to 1st Monday in February	Starts last Monday in June; Ends 2nd Monday thereafter.	Starts last Monday in June; Ends 2nd Monday thereafter.	Starts last Monday in June; Ends 2nd Monday thereafter.	Starts 2nd Monday in June; Ends 1st Monday in July.
Presidential Primary	Tuesday after 1st Monday in May.	Tuesday after 1st Monday in March.	Tuesday after 1st Monday in May. (Not mentioned in bill.)	Tuesday after 1st Monday in May. (Not mentioned in bill.)	Tuesday after 1st Monday in May. (Not mentioned in bill.)
First Primary for State/Local/Congress.	Tuesday after 1st Monday in May	2nd Tuesday after 1st Monday in September	2nd Tuesday after 1st Monday in September	1st Tuesday in September	Tuesday after the 1st Monday in September
Second Primary	4 weeks after 1st primary	**Abolished**	Three weeks after 1st primary.	Three weeks after 1st primary.	Three weeks after 1st primary.
Unaffiliated Candidate Petition Deadline	Last Friday in June	Last Friday in August	Last Friday in August.	Last Friday in August.	Last Friday in August.
New Party Petition Deadline	June 1	June 1 (Not mentioned in bill.)	June 1 (Not mentioned in bill.)	June 1 (Not mentioned in bill.)	June 1 (Not mentioned in bill.)
New Party Nominees Certified	July 1	Day of primary	Day of 1st primary.	Day of 1st primary.	Day of 1st primary.
Absentee Ballots Available	50 days before primary or election	50 days, but State Board is given discretion to make them available at earliest time practicable.	50 days, but State Board is given discretion to make them available at earliest time practicable.	50 days, but State Board is given discretion to make them available at earliest time practicable.	50 days, but State Board is given discretion to make them available at earliest time practicable.
Time for Requesting Mandatory Recount	County candidate: 2 days after canvass State candidate: 8 days after election.	County candidate: 2 days after canvass State candidate: 8 days after election.	County candidate: 1 day after canvass State candidate: 6 days after election.	County candidate: 1 day after canvass State candidate: 6 days after election.	County candidate: 1 day after canvass State candidate: 6 days after election.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, February 25, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **79** Repeal More Antiquated Laws
Sequential Referral: None
Recommended Referral: None

S.B. **95** Validate Notarial Acts
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 2-25-97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Floyd M. Lewis	General Statutes Commission
Rob Christensen	N&O
Jamie Callendar	Senator Rand's Intern
Fran Pace	Charlotte Observer
C. Michelle Taylor	Reg. at Telgram
R. Paul Wilms	NCHBA
Mike Carpenter	NCHBA
Marian Dodd	League of Women Voters NC
Kathryn Queen	Wake Co Bd of Elections
[illegible]	DOC
[illegible]	TDA
Johnnie McLean	State Bd of Elections
[illegible]	NCATA
Nancy Bradley	NCCBI
Thomas Watts	Carolinas Health Care Syst.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
V L McBride	NCTP
Omar Bradley	Washington DC
[illegible]	NCJCDC
George M. Teeter	Mozer + Van Hille
Joni Guerhart	NC Citizen Action
Chris Fitzsimon	Common Sease Foundation
Bobby Byrum	RRC
MG Gibson	Banyat

MINUTES
SENATE JUDICIARY COMMITTEE
FEBRUARY 27, 1997

The Senate Judiciary Committee met on Thursday, February 27, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members, pages and guests.

Senator Gulley was recognized to explain **Senate Bill 2** - AN ACT TO PROVIDE FOR A LATER PRIMARY DATE; TO ABOLISH THE RUNOFF PRIMARY; AND TO CHANGE THE DATE OF THE PRESIDENTIAL PRIMARY.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 2 for discussion. The motion carried by voice vote.

Senator Winner moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Soles, Acting Chairman, recognized Senator Cooper to explain **Senate Bill 149** - AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES. (An explanation of the bill is attached.)

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 149 for discussion. The motion carried by voice vote.

Senator Allran, Co-Sponsor of the bill, was recognized to add further comment on the bill.

The following people were recognized to speak on the bill:

Joe Parker, Director of the Governor's Highway Safety Program
Summer Woodle, a student at St. Mary's and a member of the Governor's Counsel for Young Adult Drivers
Stan McHenry, a member of the Durham Police Department and a Traffic Homicide Investigator

Senator Soles asked members of the Committee to bring amendments they would like to have considered regarding Senate Bill 149 to the meeting on Tuesday, March 4th.

There being no further business, the meeting was adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

SENATE JUDICIARY COMMITTEE
FEBRUARY 27,1997

AGENDA

SB 2	Change Primary Date (1)	Gulley
SB 149	Graduated Drivers Licenses	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 2

Short Title: Change Primary Date. (Public)

Sponsors: Senators Gulley; Albertson, Ballance, Conder, Cooper, Dalton, Dannelly, Hoyle, Jordan, Kerr, Lee, Lucas, Miller, Odom, Perdue, Phillips, Plyler, Rand, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A LATER PRIMARY DATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-1(b) reads as rewritten:

"(b) On ~~Tuesday next after the first Monday in May~~ the second Tuesday after the first Monday in September preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices."

Section 2. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~four~~ three weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second

primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

Section 3. (a) G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

(b) G.S. 163-323(b) reads as rewritten:

"(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the election:

Judges of the superior courts."

Section 4. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the ~~first day of July prior to the general election,~~ day of the primary election under G.S. 163-1(b), the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for ~~State,~~

~~congressional, and national~~ offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party."

Section 5. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 6. G.S. 163-123(c) reads as rewritten:

"(c) Petitions for Write-in Candidacy. -- An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon ~~on the 90th day before the general election.~~ the day of the primary under G.S. 163-1(b). They shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which

the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be

signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1)."

Section 7. G.S. 163-114 reads as rewritten:

"§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county

executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. ~~If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.~~

In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 8. Article 20 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-226.4. Special deadlines for general election.**

Notwithstanding any other provision of this Article or Article 21 of this Chapter, the State Board of Elections shall provide that absentee ballots shall be available for the primary or general election at the earliest time practicable and may provide an alternative schedule for meetings of the county board of elections under G.S. 163-230 to accommodate the revised schedule."

Section 9. G.S. 163-179.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

(1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or

(2) Has received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by noon on the ~~second~~ day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount."

Section 10. G.S. 163-192.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

(1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or

(2) Received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the ~~eighth~~ sixth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within ~~48~~ 24 hours of notification."

Section 11. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, they shall instead take office on the same day in October after the primary, and the terms of any such member which would otherwise expire in July of 1998 or July of 2000 are extended accordingly.

Section 12. G.S. 163-111(c) reads as rewritten:

"(c) Procedure for Requesting Second Primary. --

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-

Director of the State Board of Elections no later than 12:00 noon on the ~~seventh~~ sixth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a ~~48-hour~~ 24-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no later than 12:00 noon on the ~~seventh~~ sixth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary."

Section 13. G.S. 163-111(d) reads as rewritten:

"(d) Tie Votes; How Determined. --

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of

elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within ~~three days~~ one day after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within ~~three days~~ one day after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within ~~three days~~ one day after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed ~~three-day~~ period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the

candidate who received the highest vote and the remaining candidate who received the second highest vote."

Section 14. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 2
Proposed Committee Substitute -- S2-PCSRR-004

Short Title: Shorter Election Year. (Public)

Sponsors:

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A LATER PRIMARY DATE; TO ABOLISH THE RUNOFF PRIMARY; AND TO CHANGE THE DATE OF THE PRESIDENTIAL PRIMARY.

The General Assembly of North Carolina enacts:

PART 1. LATER PRIMARY DATE.

Section 1. G.S. 163-1(b) reads as rewritten:

"(b) On ~~Tuesday next after the first Monday in May~~ the second Tuesday after the first Monday in September preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices."

Section 2. (a) G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

Governor

Lieutenant Governor

All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

(b) G.S. 163-323(b) reads as rewritten:

"(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the ~~first Monday in January~~ last Monday in June and no later than 12:00 noon on the ~~first Monday in February~~ second Monday thereafter preceding the election:

Judges of the superior courts."

Section 3. G.S. 163-98 reads as rewritten:

"**§ 163-98. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the ~~first day of July prior to the general election,~~ day of the primary election under G.S. 163-1(b), the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for ~~State, congressional, and national~~ offices in the ensuing general election. The State Board of Elections shall print names thus

certified on the appropriate ballots as the nominees of the new party."

Section 4. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in ~~June~~ August

preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in ~~June~~ August preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified

in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 5. G.S. 163-123(c) reads as rewritten:

"(c) Petitions for Write-in Candidacy. -- An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon ~~on the 90th day before the general election.~~ the day of the primary under G.S. 163-1(b). They shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification

within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

(2) If the office is a district office comprising all or part of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the ~~90th day before the general election~~ day of the primary under G.S. 163-1(b) and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the

county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1)."

Section 6. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those

members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. ~~If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.~~

In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 7. Article 20 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-226.4. Special deadlines for general election.**

Notwithstanding any other provision of this Article or Article 21 of this Chapter, the State Board of Elections shall provide

that absentee ballots shall be available for the primary or general election at the earliest time practicable and may provide an alternative schedule for meetings of the county board of elections under G.S. 163-230 to accommodate the revised schedule."

PART 2. ABOLISH SECOND PRIMARY.

Section 8. G.S. 163-111 reads as rewritten:

"§ 163-111. Determination of primary results~~; second primaries~~.

~~(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. -- Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:~~

~~(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.~~

~~(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.~~

~~(b) Right to Demand Second Primary. -- If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a~~

~~second primary, subject to the conditions specified in this section, shall be held:~~

~~(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.~~

~~(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.~~

~~(c) Procedure for Requesting Second Primary. --~~

~~(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State~~

~~Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:~~

~~Governor,~~

~~Lieutenant Governor,~~

~~All State executive officers,~~

~~Justices, Judges, or District Attorneys of the General Court of Justice, other than superior court judge,~~

~~United States Senators,~~

~~Members of the United States House of Representatives,~~

~~State Senators in multi-county senatorial districts, and~~

~~Members of the State House of Representatives in multi-county representative districts.~~

~~(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or director of the county board of elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:~~

~~State Senators in single-county senatorial districts,~~

~~Members of the State House of Representatives in single-county representative districts, and~~

~~All county officers.~~

~~(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary~~

~~has been requested and of the date of the second primary.~~

~~(d) Tie Votes; How Determined. --~~

~~(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.~~

~~(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the~~

~~offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.~~

~~(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.~~

~~(c) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.~~

~~There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.~~

~~(f) No Third Primary Permitted. -- In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between~~

~~two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114.~~

(g) Nominations in primary elections shall be determined as follows:

(1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest number of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same number of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest number of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same number of votes, select the party nominee in accordance with G.S. 163-114."

Section 9. G.S. 163-227.1 is repealed.

Section 10. G.S. 163-227.3 reads as rewritten:

"**§ 163-227.3. Date by which absentee ballots must be available for voting.**

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence.

~~(b) Second Primary. -- The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the~~

~~State Board, as quickly as possible after the ballot information has been determined.~~"

Section 11. G.S. 163-278.6(8) reads as rewritten:

"(8) The term 'election' means any general or special election, a ~~first or second~~ primary, a runoff election, or an election to fill a vacancy. The term 'election' shall not include any local or statewide referendum."

Section 12. G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any primary~~, second primary,~~ or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election."

Section 13. G.S. 163-278.40B(2) reads as rewritten:

"(2) Pre-election Report. -- The treasurer shall file a report 10 days prior to the election~~, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary~~."

Section 14. G.S. 163-279(a)(2) reads as rewritten:

"(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in ~~1973~~ 1999 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, ~~the first primary shall be held on the sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election~~ and the primary shall be held on the sixth Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the

election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November."

Section 15. G.S. 163-291 reads as rewritten:

"**§ 163-291. Partisan primaries and elections.**

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged.

The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary ~~and second primary~~ shall be held on the third day (Sunday excepted) following the primary ~~or second primary~~. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

~~(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary.~~"

Section 16. G.S. 163-179.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who~~:~~

~~(1) Has~~ has received the number of votes necessary to be declared nominated for an office in a primary election with a ~~majority; or~~

~~(2) Has received the number of votes necessary to be declared nominated for an office in a second primary election~~

plurality and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount."

Section 17. G.S. 163-192.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who~~:~~

~~(1) Has~~ has received the number of votes necessary to be declared nominated for an office in a primary election with a ~~majority; or~~

~~(2) Received the number of votes necessary to be declared nominated for an office in a second primary election~~

plurality and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification."

Section 18. G.S. 163-82.6(d) reads as rewritten:

"(d) Instances When Person May Register and Vote on Election Day. -- If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;
(2) The county director of elections; or
(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be

permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election-day applications to register. ~~No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.~~ For purposes of this subsection, persons who 'become qualified to register and vote' during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period."

Section 19. G.S. 163-82.17(a) reads as rewritten:

"(a) Registrant's Duty to Report. -- Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163-82.6 before the election, indicate the change on an application form as described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a ~~primary, second primary, or special~~ primary, special, or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6."

PART 3. MOVE PRESIDENTIAL PRIMARY.

Section 20. G.S. 163-213.2 reads as rewritten:

"**§ 163-213.2. (For effective date see note) Primary to be held; date; qualifications and registration of voters.**

On the Tuesday after the first Monday in ~~May, 1992,~~ March, 2000, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and

vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than ~~the last day for making application to register under G.S. 163-67~~ the twenty-fifth day prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

PART 4. CAMPAIGN REPORTING CHANGES.

Section 21. G.S. 163-278.9(a) reads as rewritten:

"(a) ~~The~~ Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. -- The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files ~~his~~ notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law. Any contribution or expenditure to further a candidacy shall be subject to the reporting requirements of subdivisions (5a) and (6) of this subsection, even if the report is due before the individual has filed notice of candidacy.

(2) Preprimary Report. -- The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.

~~(3) Postprimary Report(s). -- The treasurer shall file a report with the Board no later than the 30th day after the primary election if the candidate was eliminated in the primary. If there is a second~~

~~primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.~~

~~(4) Preelection Report. -- The treasurer shall file a report with the Board not later than the tenth day preceding the general election.~~

~~(5) Repealed by Session Laws 1985, c. 164, s. 1.~~

(5a) Quarterly Reports. -- During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report with the Board not later than seven days after the end of each calendar quarter, covering the prior calendar quarter, except that the report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) ~~Annual~~ Semiannual Reports. -- If contributions are received or expenditures made ~~during a calendar year,~~ for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in ~~January~~ July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December. ~~of the following year.~~"

PART 5. EDGECOMBE COUNTY BOARD OF EDUCATION.

Section 22. Section 3 of Chapter 809 of the 1991 Session Laws reads as rewritten:

"Sec. 3. Elections shall be determined by a ~~substantial~~ plurality as provided in G.S. ~~163-111 for party primaries.~~ 163-292. ~~Any runoff, if needed, shall be held at the same time as the second primary for county offices.~~ "

PART 6. ORANGE COUNTY BOARD OF EDUCATION

Section 23. (a) Section 1 of Chapter 603, Session Laws of 1977, reads as rewritten:

"Section 1. The Orange County Board of Education shall be elected on a nonpartisan basis at the time of the primary election in 1978 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to

any party affiliation. The ~~election and runoff~~ plurality election method shall be used with the results determined as provided in ~~G.S. 163-293,~~ G.S. 163-292 and absentee ballots shall be permitted. Except as may be otherwise provided herein, the elections shall be conducted according to the provisions of Chapter 163 of the General Statutes governing elections for county officers."

(b) Section 6 of Chapter 603, Session Laws of 1977, as enacted by Section 2 of Chapter 1214, Session Laws of 1981, reads as rewritten:

"Sec. 6. ~~If a runoff election is required, the runoff election shall be held at the time for the second primary as provided in G.S. 163-111(e) and those~~ Those persons elected members of Orange County Board of Education shall qualify and take office on the first Monday of the month following their election."

PART 7. YANCEY COUNTY BOARD OF EDUCATION

Section 24. Section 1 of Chapter 203, Session Laws of 1973, as rewritten by Section 1 of Chapter 135, Session Laws of 1985, reads as rewritten:

"Section 1. The Yancey County Board of Education shall consist of five members who shall be elected by the voters of Yancey County, for staggered terms of four years, in a nonpartisan election as herein provided.

Beginning with the primary election for county offices to be held in 1974, there shall be a nonpartisan election to elect successors to the present members of the school board whose terms expire in 1974, and every two years thereafter, as the terms of the members expire.

The nonpartisan ~~election and runoff~~ plurality election method shall be used with the results determined as provided in ~~G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e).~~ G.S. 163-292."

PART 8. OMNIBUS LOCAL ACT AMENDMENTS

Section 25. Any local act which provides for nonpartisan election of a county board of education on the date of the partisan primary under G.S. 163-1, with a nonpartisan runoff election on the date of the second primary, is amended to provide that the election is determined by the nonpartisan plurality method as provided by G.S. 163-292.

Section 26. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, they shall instead take office on the same day in October after the primary, and the

terms of any such member which would otherwise expire in July of 1998 or July of 2000 are extended accordingly.

Section 27. Any local acts in conflict with this act are repealed to the extent of the conflict.

Section 28. This act becomes effective with respect to elections held on or after January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Monday, March 3, 1997

SENATOR COOPER,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **2** Change Primary Date

Draft Number:	PCS1577
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: ** The Short Title of the bill was also changed **

I will have Sen. Cooper sign the report.

February 27, 1997

TO: Senator Roy Cooper, Senate Judiciary Committee
FROM: Brenda J. Carter, Committee Co-Counsel
RE: **Senate Bill 149 - GRADUATED DRIVERS LICENSES**
Proposed Committee Substitute

Senate Bill 149 would change the way in which drivers licenses are issued to persons under 18 years of age. The bill is a recommendation of the Child Fatality Task Force. The Task Force found that safe driving requires instruction and actual driving experience. To ensure that a person who is less than 18 years of age has both instruction and experience before obtaining a drivers license, the bill provides that driving privileges would be granted on a graduated basis as follows:

1) Driving for at least 12 months with a limited learners permit.
2) Driving for at least 6 months with a limited provisional license.
3) Driving until the age of 18 with a provisional license.

The act becomes effective December 1, 1997, but will not apply to persons who have a valid limited learner's permit, learner's permit, or provisional drivers license (16-18 years old) prior to the effective date.

Under present law, a person who is at least 15 years of age may be granted a limited learner's permit if the person has completed a driver's education program. A person who is at least 16 years of age may be granted a learner's permit without the necessity of completing a driver's education program. The holder of a limited learner's permit and a learner's permit may only drive when accompanied by a parent, guardian, or other person approved by the Division of Motor Vehicles who is licensed to operate the motor vehicle. That person must be seated beside the permit holder. A person who is at least 16 years of age, but less than 18 years of age, may obtain a drivers license if the person has completed a driver's education program. A person between the ages of 16 and 18 years old who holds a driver's license (known as a provisional licensee), is not subject to any supervision restrictions.

Senate Bill 149 would change the current law in the following ways:

1) It would require driver education programs to include at least six hours of actual driving experience. (Section 3)

2) It would require all licensed drivers under the age of 18 to drive under a limited learner's permit for at least 12 months.

3) It would place the following restrictions on a driver with a limited learner's permit:
   - Supervised driving between the hours of 5:00 am and 9:00 pm for the first six months.
   - Supervised driving at any time following the first six months.
   - The supervisor must be a parent, guardian, or other person approved by the Division. The person must have been licensed to drive for at least five years.
   - The supervisor may be the only other person in the front seat of the vehicle.
   - All passengers must be wearing a seat belt.

4) It would provide a new level of license known as a limited provisional license. To obtain a limited provisional license, a person must have possessed a Level 1 limited learner's permit for at least 12 months with no moving violations or seat belt violations. It would place the following restrictions on a driver with a limited provisional license:
   - May drive unsupervised from 5:00 am until 9:00 pm and when going to and coming from work.
   - May drive under supervision at any time. The supervisor must sit next to the driver, but the supervisor need not be the only other occupant of the front seat.
   - All passengers must be wearing a seat belt.

5) The third level, known as a full provisional license, would be comparable to a provisional license under current law. To obtain a full provisional license, a person must have possessed a Level 2 limited provisional license for a period of at least 6 months with no moving violations or seat belt infractions. A full provisional licensee may drive unsupervised at any time.

6) It would give the Division of Motor Vehicles three choices when a person between the ages of 16 and 18 years of age, who becomes a resident of North Carolina and holds a valid unrestricted drivers license from the prior state of residence, applies for a North Carolina drivers license. Under current law, if that driver has not completed a course in driver education which meets the requirements of this State, the Division may grant a temporary driver's permit under terms and conditions deemed necessary to allow the minor to

operate a motor vehicle in order to obtain the driver education courses necessary for a North Carolina provisional license. Under the changes made by this bill, DMV would be able to do one of three things:

- It may issue a temporary driver's permit to allow the driver to obtain the driver education. This option is the same as the current law.
- It may issue a graduated license appropriate to the driver's age and experience as provided by G.S. 20-11.
- It may issue an unrestricted drivers license if the person has possessed a valid unrestricted drivers license in his previous state for the 12 month period immediately preceding the date of application and has not been convicted of a traffic violation for which points might be assessed under the Uniform Driver's License Act.

7) The fee for obtaining a limited learner's permit or a limited or full provisional license is $10. Under current law, the fee for a learner's permit is $10. The fee for a license is $2.50 for each year the license will be valid.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 149*

Short Title: Graduated Drivers Licenses. (Public)

Sponsors: Senators Cooper, Allran; Albertson, Ballantine, Blust, Carpenter, Carrington, Cochrane, Dalton, Dannelly, East, Forrester, Foxx, Garwood, Gulley, Hartsell, Hoyle, Jordan, Kinnaird, Ledbetter, Lee, Lucas, Martin of Guilford, McDaniel, Miller, Odom, Page, Perdue, Phillips, Reeves, Rucho, Shaw of Guilford, Wellons, and Winner.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"**§ 20-11. Application of minors.**

(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.

The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such

instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them. All approved driver training and safety education courses and courses of driving instruction shall include at least six hours of actual driving experience.

(b) The Division may issue a Level 1 limited learner's permit to a minor who is at least 15 years old ~~but is less than 16 years old~~ and who otherwise meets the requirements of this section. An application for a Level 1 limited learner's permit ~~must~~ shall be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A Level 1 limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle under the conditions specified in subdivision (d)(1) of this section while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a Level 1 limited learner's permit is ten dollars ($10.00). In the event a minor who holds a Level 1 limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.

A driver who holds a Level 1 limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid unrestricted motor vehicle driver's license from his prior state of ~~residence but has not completed a course in driver education which meets the requirements of this State, grant to such~~ residence:

(1) Issue to the minor a temporary driver's permit ~~under such~~ with any necessary terms and conditions ~~as shall be deemed necessary by the Division~~ to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses or a course of driving instruction necessary for a drivers license in North ~~Carolina.~~ Carolina;

(2) Issue to the minor the graduated license appropriate to his age and experience as provided by this section; or

(3) Issue to the minor an unrestricted drivers license if the minor has possessed a valid unrestricted drivers license in his previous state of residence for the 12-month period immediately preceding the date of the application and has not been convicted of a traffic violation for which points may be assessed under this Article.

Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.

(d) Graduated Drivers Licenses. -- Provisional licensees shall be issued the graduated provisional drivers licenses appropriate to their driving experience with the following experience-based restrictions:

(1) Level 1. -- Limited learner's permit.

a. An applicant for this level provisional license shall have:

1. Passed a course of driver education prescribed in G.S. 20-88.1;

2. Passed a written test administered by the Division; and

3. Obtained a limited learner's permit pursuant to subsection (b) of this section.

b. For the first six months, a Level 1 limited learner's permit allows only supervised driving between the hours of 5:00 a.m. and 9:00 p.m.

c. The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years. The supervisor shall be the only other occupant allowed in the front seat with the driver.

d. After the first six months of issuance, a holder of this level provisional license may drive under supervision at any time.

e. Every person occupying the vehicle being driven by the Level 1 provisional licensee shall have a safety belt properly fastened about his or her body when the vehicle is in motion.

(2) Level 2. -- Limited provisional license.

a. An applicant for this level provisional license shall have:

1. Possessed a Level 1 provisional license for a period of not less than 12 months with no moving violations or seat belt infractions;

2. Passed a road test administered by the Division; and

3. Paid a fee of ten dollars ($10.00).

b. A Level 2 provisional license allows unsupervised driving from 5:00 a.m. to 9:00 p.m. and when going to and coming from work.

c. A Level 2 provisional licensee may drive under supervision at any time.

d. When a Level 2 provisional licensee is driving under supervision, the supervisor shall be the occupant of the next occupied seat to the right of the driver, but need not be the only other occupant of the front seat.

e. Every person occupying the vehicle being driven by the Level 2 provisional licensee shall have a safety belt properly

fastened about his or her body when the vehicle is in motion.

(3) Level 3. -- Full provisional license.

a. An applicant for this level provisional license shall have:

1. Possessed a Level 2 provisional license for a period of not less than six months with no moving violations or seat belt infractions; and

2. Paid a fee of ten dollars ($10.00).

b. A Level 3 provisional licensee may drive unsupervised at any time.

(e) The provisional licenses shall bear a distinctive color photographic background indicating the level of driving experience of the licensee.

(f) After deducting the costs of administering the provisional license program pursuant to this section, the Division shall transfer, quarterly, any balance of the funds received as fees to the Highway Fund."

Section 2. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S149-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 149
THIS IS A DRAFT 26-FEB-97 17:56:17
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Graduated Drivers Licenses. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DIRVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"§ 20-11. ~~Application of minors.~~ Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

~~(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

~~The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed~~

~~the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.~~

~~(b) The Division may issue a limited learner's permit to a minor who is at least 15 years old but is less than 16 years old and who otherwise meets the requirements of this section. An application for a limited learner's permit must be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a limited learner's permit is ten dollars ($10.00). In the event a minor who holds a limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.~~

~~A driver who holds a limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.~~

~~(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle driver's drivers license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary driver's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses necessary for license in North Carolina.~~

~~Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.~~

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1: Driving with a limited learner's permit.

(2) Level 2: Driving with a limited provisional license.

(3) Level 3: Driving with a full provisional license.

The permits and licenses will bear a distinctive color photographic background or border indicating the level of driving experience of the permit holder or licensee.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school

(2) Passes a written test administered by the Division.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The holder of the permit must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding 12 months.

(3) Passes a road test administered by the Division.

(e) Level 2 Restrictions.-- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision from 5:00 a.m. to 9:00 p.m. and when driving to or from work.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted of an offense for which points are assessed under G.S. 20-16 during the preceding 12 months.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, but either did not hold the license issued by the other state for at least 12 months or was convicted of an offense for which points are assessed under G.S. 201-6 during the preceding 12 months.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and by the applicant's parent or guardian or, if a parent or guardian is not available, by an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the 18th birthday of the permit holder. A limited provisional license expires on the 18th birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars ($10.00).

(k) Supervising Driver. -- The supervising driver must be the parent or guardian of the permit holder or the license holder or, if a parent or guardian is not available, by an adult approved by the Division. The supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of

determining the inexperienced operator premium surcharge under automobile insurance policies."

Section 2. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as required by ~~that section.~~ those sections."

Section 3. G.S. 20-88.1(a) reads as rewritten:

"(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. ~~The~~

The driver education program established pursuant to this section shall include ~~instructions~~ the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter. ~~In addition, this program shall include at~~

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience."

Section 4. G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. All driver training and safety education courses and courses of driving instruction must include at least six hours of actual driving experience."

Section 5. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have ~~a~~ either a full provisional license issued under G.S. 20-11 or a regular drivers license issued under this section and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 6. This act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Section 7. This act becomes effective December 1, 1997, if the General Assembly appropriates the necessary funds from the Highway Fund to the Department of Transportation, Division of Motor Vehicles, to administer the provisional license program. The act does not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee holding a valid North Carolina drivers license issued before the effective date of this act.

SENATE JUDICIARY
Name of Committee

2-27-97
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lori EVERHART	NC Citizen Action
Harriett Southerland	DOA/YAIO
Martha P. Livengood	DOA/YAIO
Lucia Fuel	NC Medical Society
Mary Treadway	Doctor of the Day
Tom Vitagliano	DMCH/DEHNR
Tom Bennett	N.C. Child Fatality Task Force
Michelle Taft	R.M. Telegram
YVONNE SOUTHERLAND	STATE Bd of ELECTIONS
Sheila H. McKenney	NC Dept. of Insurance

VISITOR REGISTRATION SHEET

SENATE JUDICIARY — 2-17-99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
STAN McHENRY	DURHAM POLICE DEPT.
Maureen Davis	Governor's Hwy Safety Prog.
Sumer Woodle	member of the Governors Council for Young Adult Drivers
Joz Parker	GHSP
George Reed	NC Council of Churches
Paula A. Wolf	Covenant with North Carolina's Children
Johnnie McLean	St. Bd. of Elections
BILL SCOGGIN	NC BAR ASSOC.
Don McCorquodale	NC Retail
Shannon Bullock	GHSP
Kathy Queen	Wake Co. Bd of Elections

Senate Judiciary — 2-27-97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCAB
Alicia Gruenebaum	intern
Nancy Bradley	NCCBD
Natalie Haskins	Charlotte Chamber
Patricia Roeder	NCACC
Steve Keene	NCMS
[signature]	NCFB
[signature]	NCOA
Kaelyn Hawthorne	NCHA
Helen Carpenter	Clerk for Senator Carpenter

VISITOR REGISTRATION SHEET

Senate Judiciary
Name of Committee

2-27-97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Rob Christensen	N+O
FRED TAYLOR	WRAL-TV
Charles Crumor	TCATL

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 4, 1997

The Senate Judiciary Committee met on Tuesday, March 4, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members and guests.

Senator Soles, Acting Chair, recognized Senator Cooper to explain **Senate Bill 149** - AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

Senator Cooper moved to adopt Proposed Committee Substitute 002 for Senate Bill 149 for discussion. The motion carried by voice vote.

Tony Spence, with the Department of Motor Vehicles, and Lawrence Davis were recognized to answer questions from the Committee.

Senator Odom moved to give the Proposed Committee Substitute a favorable report and re-refer it to the Senate Finance Committee. The motion carried by voice vote.

Senator Cooper recognized Senator Rand to explain **Senate Bill 143** - AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE.

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 143 for discussion. The motion carried by voice vote.

The Honorable Mike Easley, N. C. Attorney General, was recognized to speak on the bill. He urged the Committee to support this legislation.

Marvin Musslewhite, representing U. S. Tobacco Public Affairs, Inc., was recognized to answer questions from the Committee.

Senator Cooper announced that the Proposed Committee Substitute would be voted on at the meeting on Thursday, March 6, 1997.

There being no further business, the meeting was adjourned.

R. A. Cooper, III
Senator Roy A. Cooper, III, Chairman

Susan M. Moore
Susan M. Moore, Committee Clerk

SENATE JUDICIARY COMMITTEE
MARCH 4,1997

AGENDA

SB 143	Ban Tobacco Sales to Minors	Rand
SB 149	Graduated Drivers Licenses	Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S149-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 149
THIS IS A DRAFT 26-FEB-97 17:56:17
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Graduated Drivers Licenses. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DIRVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"§ 20-11. ~~Application of minors.~~ Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

~~(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

~~The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed~~

~~the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.~~

~~(b) The Division may issue a limited learner's permit to a minor who is at least 15 years old but is less than 16 years old and who otherwise meets the requirements of this section. An application for a limited learner's permit must be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a limited learner's permit is ten dollars ($10.00). In the event a minor who holds a limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.~~

~~A driver who holds a limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.~~

~~(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle driver's drivers license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary driver's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses necessary for license in North Carolina.~~

~~Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.~~

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1: Driving with a limited learner's permit.

(2) Level 2: Driving with a limited provisional license.

(3) Level 3: Driving with a full provisional license.

The permits and licenses will bear a distinctive color photographic background or border indicating the level of driving experience of the permit holder or licensee.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school

(2) Passes a written test administered by the Division.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The holder of the permit must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding 12 months.

(3) Passes a road test administered by the Division.

(e) Level 2 Restrictions.-- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision from 5:00 a.m. to 9:00 p.m. and when driving to or from work.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted of an offense for which points are assessed under G.S. 20-16 during the preceding 12 months.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, but either did not hold the license issued by the other state for at least 12 months or was convicted of an offense for which points are assessed under G.S. 201-6 during the preceding 12 months.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and by the applicant's parent or guardian or, if a parent or guardian is not available, by an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the 18th birthday of the permit holder. A limited provisional license expires on the 18th birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars ($10.00).

(k) Supervising Driver. -- The supervising driver must be the parent or guardian of the permit holder or the license holder or, if a parent or guardian is not available, by an adult approved by the Division. The supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of

determining the inexperienced operator premium surcharge under automobile insurance policies."

Section 2. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as required by ~~that section.~~ those sections."

Section 3. G.S. 20-88.1(a) reads as rewritten:

"(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. ~~The~~

The driver education program established pursuant to this section shall include ~~instructions~~ the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter. ~~In addition, this program shall include at~~

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience."

Section 4. G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. All driver training and safety education courses and courses of driving instruction must include at least six hours of actual driving experience."

Section 5. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have ~~a~~ either a full provisional license issued under G.S. 20-11 or a regular drivers license issued under this section and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 6. This act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Section 7. This act becomes effective December 1, 1997, if the General Assembly appropriates the necessary funds from the Highway Fund to the Department of Transportation, Division of Motor Vehicles, to administer the provisional license program. The act does not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee holding a valid North Carolina drivers license issued before the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S149-CSRV-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 149
THIS IS A DRAFT 3-MAR-97 15:18:23
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Graduated Drivers Licenses. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DIRVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"§ 20-11. ~~Application of minors.~~ Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

~~(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

~~The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed~~

~~the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.~~

~~(b) The Division may issue a limited learner's permit to a minor who is at least 15 years old but is less than 16 years old and who otherwise meets the requirements of this section. An application for a limited learner's permit must be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a limited learner's permit is ten dollars ($10.00). In the event a minor who holds a limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.~~

~~A driver who holds a limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.~~

~~(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle driver's drivers license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary driver's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses necessary for license in North Carolina.~~

~~Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.~~

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1: Driving with a limited learner's permit.

(2) Level 2: Driving with a limited provisional license.

(3) Level 3: Driving with a full provisional license.

The permits and licenses will bear a distinctive color photographic background or border indicating the level of driving experience of the permit holder or licensee.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school

(2) Passes a written test administered by the Division.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The holder of the permit must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding 12 months.

(3) Passes a road test administered by the Division.

(e) Level 2 Restrictions.-- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision from 5:00 a.m. to 9:00 p.m. and when driving to or from work.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit, and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding 12 months of a motor vehicle moving violation or seat belt infraction or of any offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the State Superintendent of Public Instruction, but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding 12 months of a motor vehicle moving violation or seat belt infraction or of any offense committed in another jurisdiction that would be a motor vehicle moving violation or selt belt infraction if committed in this State.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and by the applicant's parent or guardian or, if a parent or guardian is not available, by an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the 18th birthday of the permit holder. A limited provisional license expires on the 18th birthday of the license holder. A

full provisional license expires on the date set under G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars ($10.00).

(k) Supervising Driver. -- The supervising driver must be the parent or guardian of the permit holder or the license holder or, if a parent or guardian is not available, by an adult approved by the Division. The supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Violations. -- It is unlawful for the holder of a limited learner's permit, temporary permit, or a limited provisional license to operate a motor vehicle without complying with applicable restrictions. Failure to comply with restrictions concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with other restrictions, including seating and passenger limitations, is an infraction punishable by a fine as provided in G.S. 20-176.

(m) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies."

Section 2. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as required by ~~that section.~~ those sections."

Section 3. G.S. 20-88.1(a) reads as rewritten:

"(a) In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of this State for all physically and mentally qualified persons who (i) are

older than 14 years and six months, (ii) are approved by the principal of the school, pursuant to rules adopted by the State Board of Education, (iii) are enrolled in a public or private high school within the State, and (iv) have not previously enrolled in the program. The State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds that become available for its use for said purpose. ~~The~~

The driver education program established pursuant to this section shall include ~~instructions~~ the following:

(1) Instruction on the rights and privileges of the handicapped and the signs and symbols used to assist the handicapped relative to motor vehicles, including the "international symbol of accessibility" and other symbols and devices as provided in Article 2A of this Chapter. ~~In addition, this program shall include at~~

(2) At least six hours of instruction on the offense of driving while impaired and related subjects.

(3) At least six hours of actual driving experience."

Section 4. G.S. 20-322(b) reads as rewritten:

"(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. All driver training and safety education courses and courses of driving instruction must include at least six hours of actual driving experience."

Section 5. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have ~~a~~ either a full provisional license issued under G.S. 20-11 or a regular drivers license issued under this section and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 6. This act does not appropriate funds to the Division to implement this act nor does it obligate the General Assembly to appropriate funds to implement this act.

Section 7. This act becomes effective December 1, 1997, if the General Assembly appropriates the necessary funds from the Highway Fund to the Department of Transportation, Division of Motor Vehicles, to administer the provisional license program. The act does not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee holding a valid North Carolina drivers license issued before the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, March 5, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **149** Graduated Drivers License

Draft Number:	PCS 1588
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: I will have Sen. Cooper sign

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 4, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 143 - BAN TOBACCO SALES TO MINORS** - Senator Rand.

Senate Bill 143 tightens the laws prohibiting the sale or distribution of tobacco products to person under age 18 and tightens the requirements for retailers to check for proof of age.

Section 1 of the bill amends the existing law by restricting proof of age to drivers licenses or other photographic identification with the person's birth date.

Section 2 changes the criminal statute prohibiting the sale of tobacco products to persons under age 18 in several ways. This section of the law makes it a Class 2 misdemeanor to give or sell tobacco products to a minor or to fail to demand proof of age to a person who they reasonably believe to be under age 18. First, this section deletes the requirement that the person selling tobacco products knows that the buyer is under 18 before the law is violated. Second, this section requires retail distributors to post a sign at the point of sale notifying the public that sale of tobacco products to minors is illegal, and that proof of age is required. (Failure to post the sign is an infraction, punishable by a fine of $25 for the first offense, and $75 for each succeeding offense.) Third, this section makes a distinction between the proof of age required for a defense by a retailer vs. a nonretailer. (Retailers required to check photographic identification, nonretailers only required to have other documentary or written evidence of age). Fourth, this section states that retail distributors shall train sales employees in the requirements of the law.

Section 3 amends the law that makes it an infraction for a person under 18 to purchase or accept receipt of tobacco products, by increasing the penalty to a Class 2 misdemeanor for using a false identification card for the purpose of buying tobacco products.

Section 4 deletes the requirement that a person sending a person under the age of 18 to buy or acquire tobacco products knows the person to be under age 18.

Section 5 adds a new section which requires that all tobacco vending machines either must be in establishments open only to persons age 18 or over, or where the vending machine is under the continuous control of the operator of the premises and the operator will only operate the machine upon proof of age when the person buying the tobacco products appears to be under age 18. All machines not in compliance must be removed before the effective date of the bill. Violation of any provisions of this section constitute a Class 2 misdemeanor.

Section 6 prohibits the sale of loose cigarettes to anyone by a person engaged in the sale of cigarettes. Violation of this provision is a Class 2 misdemeanor

The bill becomes effective August 1, 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 143

Short Title: Ban Tobacco Sales to Minors. (Public)

Sponsors: Senators Rand, Hartsell; Albertson, Ballantine, Blust, Carrington, Cochrane, Cooper, Dannelly, East, Forrester, Garwood, Gulley, Hoyle, Jordan, Kinnaird, Martin of Guilford, Miller, Page, Perdue, Phillips, Plyler, Reeves, Rucho, Soles, and Winner.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

"(a) Definitions. -- The following definitions apply in this section:

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S143-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 143
THIS IS A DRAFT 3-MAR-97 19:26:12
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Ban Tobacco Sales to Minors. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

"(a) Definitions. -- The following definitions apply in this section:

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eights of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of an infraction as provided in G.S. 14-3.1. If any person under the

age of 18 years presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and

reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-4-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
DA	NCHB
Christine Healy	NC Tri-Agency Council
Larry Jordan	NCPMA
Gary Harris	NCPMA
Doug Honey	NCPMA
Celia Entwistle MD	Doctor of the Day
Carita A. King	Cabarrus Radiologists/Cab. Emerg. Med.
Jane Prusky	NC Passenger Safety Assoc
R. Paul Wilms	NCHBA
Andy Romanet	N.C.L.M.
JoAnn WHITFIELD	BPW N.C.
Carolyn B. Williams	BPW/NC 251 Summit Dr NE Concord 28021
Brenda Harris	BPW/NC
Sarah Ann Christian	BPW/NC - Durham NC NCAWA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-4-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GEORGE REES	NC COUNCIL OF CHURCHES
Tony Spencer	DMV
Harriett Sutherland	DOA/YAIO
Martha Livengood	DOA/YAIO
Jim Martin	DEHNR / DHP
Laura Hartsell	
David Simmons	Zebulon, PA
Harry Kaplan	Attorney at Law
Jeanne Doggett	
Marian Dodd	League of Women Voters NC
Amanda Digby	NC Academy of Trial Lawyers
BILL SCOGGIN	NCBA
Will Jones	NCAHC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 3-4-97

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Vera Bregeale	B-P-W 2011 12th St. Tr. NW, Hickory, N.C. 28601
Mary Sharon Dunn	Hickory BPW 1232 10th St. Blvd NW Hickory, NC 28601
Thomas V. Bennett	N.C. Child Fatality Task Force
Joe Parker	GHSP
Laurence Jarrett	NC Passenger Safety Assoc
Nancy Stancill	Charlotte Observer
Susan Valauri	Nationwide Insurance
Rob Foss	UNC
Julie Rebder	NC Child Advocacy Institute
Myrna Mills	NASW-NC
Megan Carney	BSW Student - Meredith College
Cam Cover	NCACS

Robert Pearson · N.C. Conv. Store Assn.

Lowell Simon NC Assoc of Conv. Stores

Michael Carpenter UNCCPSW

Amy Jo Bain Smith Anderson

Ron Adams Good Neighbor Alliance

Deborah Bryan Amer. Lung Assn. of NC

Jane O Gray DOJ

Richard Adams Tri-County Council

Dave Hunt Sheriff

Beryl R. Wade Gov's Off

Curt Gray press

ED Dalton Assoc. Press

Fred Tyl WRAL-TV

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 6, 1997

The Senate Judiciary Committee met on Thursday, March 6, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members and guests.

Senator Cooper announced that due to the illness of one of the parties concerned with Senate Bill 247, it would be taken up at the meeting on Tuesday, March 11, 1997.

Senator Rand was recognized to continue the discussion of the Proposed Committee Substitute to **Senate Bill 143** - AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

Mike Easley, N. C. Attorney General, was recognized to speak on the bill and to answer questions from the Committee.

Fran Preston, Executive Director of the N. C. Merchants Association, was recognized to speak on the bill.

Senator Kerr moved to amend the Proposed Committee Substitute on Page 2, Line 17 and on Page 3, Line 18. The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new Committee Substitute. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Roy A. Cooper, III — Susan M. Moore

Sen. Roy A. Cooper, III, Chairman — Susan M. Moore, Committee Clerk

SENATE JUDICIARY COMMITTEE
MARCH 6,1997

AGENDA

SB 143	Ban Tobacco Sales to Minors	Rand
SB 247	Remove Sunset/Health Contract Confidentiality	Rand

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 4, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 143 - BAN TOBACCO SALES TO MINORS** - Senator Rand.

Senate Bill 143 tightens the laws prohibiting the sale or distribution of tobacco products to person under age 18 and tightens the requirements for retailers to check for proof of age.

Section 1 of the bill amends the existing law by restricting proof of age to drivers licenses or other photographic identification with the person's birth date.

Section 2 changes the criminal statute prohibiting the sale of tobacco products to persons under age 18 in several ways. This section of the law makes it a Class 2 misdemeanor to give or sell tobacco products to a minor or to fail to demand proof of age to a person who they reasonably believe to be under age 18. First, this section deletes the requirement that the person selling tobacco products knows that the buyer is under 18 before the law is violated. Second, this section requires retail distributors to post a sign at the point of sale notifying the public that sale of tobacco products to minors is illegal, and that proof of age is required. (Failure to post the sign is an infraction, punishable by a fine of $25 for the first offense, and $75 for each succeeding offense.) Third, this section makes a distinction between the proof of age required for a defense by a retailer vs. a nonretailer. (Retailers required to check photographic identification, nonretailers only required to have other documentary or written evidence of age). Fourth, this section states that retail distributors shall train sales employees in the requirements of the law.

Section 3 amends the law that makes it an infraction for a person under 18 to purchase or accept receipt of tobacco products, by increasing the penalty to a Class 2 misdemeanor for using a false identification card for the purpose of buying tobacco products.

Section 4 deletes the requirement that a person sending a person under the age of 18 to buy or acquire tobacco products knows the person to be under age 18.

Section 5 adds a new section which requires that all tobacco vending machines either must be in establishments open only to persons age 18 or over, or where the vending machine is under the continuous control of the operator of the premises and the operator will only operate the machine upon proof of age when the person buying the tobacco products appears to be under age 18. All machines not in compliance must be removed before the effective date of the bill. Violation of any provisions of this section constitute a Class 2 misdemeanor.

Section 6 prohibits the sale of loose cigarettes to anyone by a person engaged in the sale of cigarettes. Violation of this provision is a Class 2 misdemeanor

The bill becomes effective August 1, 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 143
Proposed Committee Substitute S143-PCS6561

Short Title: Ban Tobacco Sales to Minors. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

"(a) Definitions. -- The following definitions apply in this section:

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or

cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of an infraction as provided in G.S. 14-3.1. If any person under the age of 18 years presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections,

provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee, or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee, or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 143 (PCS Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) KERR
(Sen.)

moves to amend the bill on page 2, line 17

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINE TO READ:

" REQUIRED BY THIS SUBSECTION IS A CLASS 2 ~~MISDEMEANOR~~ MISDEMEANOR IF IN FACT THE PROSPECTIVE PURCHASER IS UNDER [redacted] 18 YEARS OF AGE." PROOF THAT THE DEFENDANT " ;

AND, ON PAGE 3, LINE 18

BY DELETING THE WORD "misdemeanor." and substituting " misdemeanor if in fact the prospective purchaser is under 18 years of age."

SIGNED J. Kerr

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Monday, March 10, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **143** Ban Tobacco Sales to Minors

Draft Number:	PCS 6565
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDECIARY COMMITTEE 3-6-97

Name of Committee **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Deanna E Wiener	EG&H
K Wright	BCBSNC
Don McCorquodale	NCRMA
Jane P. Gray	DOJ
Gene Ammons	RJR
Stan Williams	United HealthCare of NC
PAUL MANOGUE	NC NMO ASSOCIATION
Mary Kaplan	
HUGH TILSON	NCHA
FRAN PROCTOR	NCRMA
Con Cone	NCACS
Steve Lentz	"

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-6-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paula Wolf	Covenant with NC's Children
David Simmons	326 Alley, PA
Laura Hartsell	MCIC
J. Craig Lewis	PCMH
Jay Harris	NC Petroleum Marketers Assoc.
Doug Haven	" " " "
George Reed	NC Council of Churches & Baptist State Convention
Marie Mewborn	Poyner + Spruill
Joe McCleese	Smokeless Tobacco C.
Megan Carney	BSW Student - Meredith College
Jim Martin	NC DEHNR
Susan Crocker	DHR

VISITOR REGISTRATION SHEET

Senate Judiciary Committee — 3/6/97

Name of Committee — **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barrett Whitehurst	DOA/VAIO
Deborah Borgos	Amer Lung Assn of NC
Kathy Peterson	American Heart Association
Lisa Posey Greene	Am. Cancer Society
Chuck Bridger	Am. Cancer Society
Amanda Digby	NC Academy of Trial Lawyers
Lori Everhart	NC Citizen Action
Ken Johnson	Capitol Heart Associates
Curt Williams	Office of Governor
Don McConquodale	NCRMA
Brenda Colon	NC DOR
Jeanne Pruett	

VISITOR REGISTRATION SHEET

Senate Judiciary Committee 3/6/97

Name of Committee **Date**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dave Lyon	Smith Anderson
Evelyn Hawthorne	NCHA
[illegible]	Wachovia Capital
Suzanne Williams	Bode & Assoc. / T.I.
Lucia Dell	NC Medical Society
J. L. McGath	NC DEPT OF JUSTICE
Stephen Miller	NC Med Soc
Julie Rehder	NC Child Advocacy Institute
[illegible]	Tri-Agency Council

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 11, 1997

The Senate Judiciary Committee met on Tuesday, March 11, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper announced that three bills on the agenda for today's meeting would not be heard. They were: Senate Bill 30 - Speeding in a Work Zone; Senate Bill 155 - Administrative Rules/Scope of Review; and Senate Bill 161 - Judicial Timber Sale/Sealed Bid.

Senator Rand was recognized to explain **Senate Bill 247** - AN ACT TO MAKE PERMANENT THE GENERAL STATUTE PERTAINING TO CONFIDENTIALITY OF HEALTH CARE CONTRACTS.

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 247 for discussion. The motion carried by voice vote.

Hugh Stevens, representing the N. C. Press Association, and Bill Pully, representing the N. C. Hospital Association, were recognized to speak on the bill.

Senator Winner moved to amend the Proposed Committee Substitute on Page 1, Line 11. (See attached amendment.) The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report as amended and roll it into a new committee substitute. The motion carried by voice vote.

Senator Kerr was recognized to explain **Senate Bill 187** - AN ACT TO MAKE TECHNICAL CHANGES TO THE LAWS ON ADMINISTRATIVE PROCEDURE.

Senator Lucas moved to give the bill a favorable report. The motion carried by voice vote.

Senator Cooper announced that the Committee would not meet on Thursday because of President Clinton's visit to the Legislature.

There being no further business, the meeting was adjourned.

Roy A. Cooper, III
Sen. Roy A. Cooper, III, Chairman

Susan M. Moore
Susan M. Moore, Committee Clerk

SENATE JUDICIARY COMMITTEE
MARCH 11,1997

AGENDA

SB 16	Clarify Community-Based Corrections	Ballance
SB 30	Speeding in a Work Zone	Jordan
SB 155	Admin. Rules/Scope of Review	Odom
SB 161	Judicial Timber Sale/Sealed Bid	Hartsell
SB 187	APA Technical Changes	Kerr
SB 247	Remove Sunset/Health Contract Confidentiality	Rand

North Carolina General Assembly
Legislative Services Agency

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones St.
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 6, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 247 - REMOVE SUNSET ON PUBLIC HOSPITAL CONTRACT CONFIDENTIALITY** - Senator Rand.

Senate Bill 247 would remove the June 1, 1997 sunset on G.S. 131E-99 which was enacted on June 29, 1996 to continue the exemption of certain provisions of contracts by public hospitals with certain other private parties.

G.S. 131E-99 reads as follows:

§ 131E-99. Confidentiality of health care contracts.

The financial terms or other competitive health care information in a contract related to the provision of health care between a hospital and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes. (1995 (Reg. Sess., 1996), c. 713, s. 2.)

G.S. 131E-99 makes a narrow exception to the Public Records Law which generally otherwise provides that contracts of public hospitals are public records. This statute says that those parts of contracts public hospitals enter into with managed care organizations, insurance companies, employers, or other payers related to financial terms or other competitive health care information related to the provision of health care are both confidential and not a public record. The other provisions of the contract would be a public record.

On January 21, 1997, the N.C. Court of Appeals ruled in the case of Wilmington Star-News, Inc. v. New Hanover Regional Medical under the law prior to the enactment of G.S. 131E-99 that even though certain pricing information could be considered a trade secret under the Public Records Law, the exception to the Public Records Law protecting trade secrets only applies to private persons, not public bodies and therefore under the law prior to G.S. 131E-99 all parts of these contracts of public hospitals are public record. The Court noted in dictum that public exposure was one of the costs of doing business with the government. A motion for discretionary review in this case is currently pending in the N.C. Supreme Court.

This bill would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 247

Short Title: Hosp. Contrct. Confid./Sunset Off. (Public)

Sponsors: Senators Rand; Albertson, Ballance, Ballantine, Blust, Carrington, Clark, Cooper, Dannelly, Foxx, Gulley, Hartsell, Horton, Hoyle, Jenkins, Jordan, Kerr, Kinnaird, Ledbetter, Lee, McDaniel, Odom, Perdue, Plyler, Rucho, Shaw of Guilford, Soles, Warren, Wellons, and Winner.

Referred to: Judiciary.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT THE GENERAL STATUTE PERTAINING TO CONFIDENTIALITY OF HEALTH CARE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 713 of the 1995 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification. Section 2 of this act shall not affect any litigation pending as of the effective date of Section 2. ~~Section 2 of this act expires June 1, 1997.~~".

Section 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-11-97

S. B. No. SB 247 - PCS - 005 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 11

( ) WHICH CHANGES THE TITLE

by adding after that line

"Nothing in this section shall prevent an elected public body which has responsibility for the ~~institution~~ from having access to this confidential information in a closed session. This disclosure to a public body does not affect the confidentiality of the information. Members of the public body shall have a duty not to further disclose the confidential information."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 247
Proposed Senate Committee Substitute
S247-CSRU-005
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Hosp. Contrct. Confid./Sunset Off. (Public)

Sponsors:

Referred to: Judiciary.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO CONFIDENTIALITY OF HEALTH CARE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-99 reads as rewritten:

"**§ 131E-99. Confidentiality of health care contracts.**

The financial terms or other competitive health care information in a contract related to the provision of health care between a hospital or a medical school and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes."

Section 2. Section 4 of Chapter 713 of the 1995 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification. Section 2 of this act shall not affect any litigation pending as of the effective date of ~~Section 2.~~ Section 2, but otherwise shall apply to contracts entered into before, on, or after the effective date. ~~Section 2 of this act expires June 1, 1997.~~".

Section 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, March 12, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **247** Hospital Contract Confidentiality/Sunset Off

Draft Number:	PCS 7594
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 11, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel and Sabra Faires, Co-Counsel to the Joint Legislative Administrative Procedure Oversight Committee

RE: **Senate Bill 187 - Administrative Procedures Act Technical Changes -** Senator Kerr

Senate Bill 187 bill makes several technical and clarifying changes to the Administrative Procedure Act (APA), Chapter 150B of the General Statutes, and related laws. The bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

Section 1 deletes an obsolete exception to the declaratory rulings statute relative to the Department of Correction. In 1995, the General Assembly exempted from the APA all of the Department's rules that apply to inmates, therefore, the exception is no longer needed.

Section 2 revises the section on petitions for rule-making to accommodate the two notices that must be published before a permanent rule can be changed. This section conforms to the changes made by the General Assembly in 1995 to require a notice of rule-making proceedings, also known as subject matter notice, and then a notice of text. This statute was not changed in 1995 and still refers to only one notice

Section 3 clarifies that a rule changed in response to an objection by the Rules Review Commission (RRC), other than technical types of changes, follows the normal effective dates set in the APA and does not become effective on the first day of the month following the change.

Section 4 makes it clear that neither a notice of rule-making proceedings nor a notice of text is needed for the rule changes listed in the subdivision. It also deletes the requirement of not changing the substance of the rule because this requirement cannot be met for some of the listed changes, such as when a rule is changed to respond to an objection by RRC. The substance of the rule may change in that circumstance. These changes were recommended by the RRC.

Section 5. deletes the authorization to adopt by reference material that has been adopted to meet a requirement of the federal government. It is deleted because it is not clear what is

covered by this authorization and subdivision (2) of that subsection allows an agency to adopt by reference a code, standard, or regulation adopted by a State or federal agency or a generally recognized association. This change was recommended by the RRC.

Section 6 gives the Codifier of Rules the authority to omit graphics, such as diagrams and charts, from the published version of a rule when the Office has no ability to publish the graphics or publication of the graphics is impracticable. This change was recommended by the Office of Administrative Hearings (OAH).

Section 7 gives agencies that are exempt from the APA additional time to file their rules with OAH for publication in the Code and makes it clear that these agencies must submit their rules in the format requested by OAH. This change was requested by OAH. Agencies that are exempt from the rule-making provisions of the APA must nevertheless file their rules with OAH for publication in the Code so that the Code contains all the administrative rules of all state agencies.

Section 8 eliminates a conflict between G.S. 150B- 21.9(a) and 150B-21.22 on the effect of including a rule in the Code. G.S. 150B- 21.9(a) states that approval by the RRC is conclusive evidence that a rule was adopted in accordance with the APA and G.S. 150B-21.22 states that entry in the Code is prima facie evidence of compliance. This change provides that G.S. 150B-21.9(a) controls. When RRC was given the authority to determine if a rule was adopted in accordance with the procedural requirements, the provision was added that approval was conclusive evidence of compliance with the procedural requirements. G.S. 150B-21.22 was not changed accordingly, however. The time for disputing procedural compliance is before the rule becomes part of the Administrative Code. Once it is in the Code, the substance of the rule can be contested but not the procedure. This parallels the treatment for legislation. A clarification of this matter was requested by both OAH and RRC.

Section 9 clarifies that the rule manual is to include instructions on both types of rule notices. The two types are a notice of rule-making proceedings and a notice of text.

Sections 10 and 12 add references that serving as a member of the RRC is grounds for obtaining a continuance in civil and criminal court cases. Lawyers are frequently members of the RRC.

Section 11 clarifies the rule-making authority of the Office of Administrative Hearings.

Section 13 specifies that the bill is effective when it becomes law.

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

(1) Another rule or part of a rule adopted by the agency.

(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.

(3) **Material adopted to meet a requirement of the federal government.** (Emphasis added)

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3, c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. -- The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. **Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.** (Emphasis added)

(b) Timetable. -- The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f).)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 187*

Short Title: APA Technical Changes. (Public)

Sponsors: Senators Kerr, Ballance, Foxx; and McDaniel.

Referred to: Judiciary.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LAWS ON ADMINISTRATIVE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-4(b) is repealed.

Section 2. G.S. 150B-20(c) reads as rewritten:

"(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making ~~petition requesting the creation or amendment of a rule,~~ petition, the notice of ~~rule-making~~ rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making ~~petition,~~ petition and state the name of the person who submitted the rule-making ~~petition,~~ petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making ~~petition,~~ petition and state whether the agency endorses the proposed ~~rule change.~~ text."

Section 3. G.S. 150B-21.3(f) reads as rewritten:

"(f) Technical Change. -- A permanent rule for which no notice or hearing is required under G.S. ~~150B-21.5(a) or (b)~~ 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

Section 4. G.S. 150B-21.5 reads as rewritten:

"**§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

(a) Amendment. -- An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a ~~rule, without changing the substance of the rule,~~ rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection."

Section 5. G.S. 150B-21.6(3) is repealed.

Section 6. G.S. 150B-21.20 reads as rewritten:

"**§ 150B-21.20. Codifier's authority to revise form of rules.**

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.
(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official ~~rule.~~ rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

Section 7. G.S. 150B-21.21 reads as rewritten:

"**§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.**

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within ~~15~~ 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled 'North Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule required to be included in the Code within ~~15~~ 30 days after it is adopted. ~~The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.~~

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina

Administrative Code. ~~One of these~~ These exempt agencies must submit a rule to the Codifier of Rules within ~~15~~ 30 days after ~~it adopts~~ adopting the rule. ~~The~~

(c) Publication. -- A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule ~~of one of these agencies in the North Carolina Administrative Code~~ submitted under this section in the same manner as other rules in the North Carolina Administrative Code."

Section 8. G.S. 150B-21.22 reads as rewritten:

"**§ 150B-21.22. Effect of inclusion in Code.**

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. ~~Codification of a rule in the North Carolina Administrative Code is prima facie evidence of compliance with this Article.~~"

Section 9. GS. 150B-21.23 reads as rewritten:

"**§ 150B-21.23. Rule publication manual.**

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of ~~rule making~~ rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code."

Section 10. G.S. 1A-1, Rule 40 reads as rewritten:

"**Rule 40. Assignment of cases for trial; continuances.**

(a) The senior resident superior court judge of any superior court district or set of districts as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for trial in the superior court division of the various counties within his district or set of districts. Calendaring of actions for trial in the district court shall be in accordance with G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this State.

(b) No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly.~~ Assembly or the Rules Review Commission."

Section 11. G.S. 7A-751 reads as rewritten:

"**§ 7A-751. Agency head; powers and duties.**

The head of the Office of Administrative Hearings is the Chief Administrative Law ~~Judge. He~~ Judge, who shall serve as Director ~~and have~~ of the Office. The Chief Administrative Law Judge has the powers and duties conferred on ~~him~~ that position by this Chapter and the Constitution and laws of this ~~State. His~~ State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be fixed by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive longevity pay on

the same basis as is provided to employees of the State who are subject to the State Personnel Act."

Section 12. G.S. 15A-952(g) reads as rewritten:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

(1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

(2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and

(3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.

(4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly.~~ Assembly or the Rules Review Commission."

Section 13. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Tuesday, March 11, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **187** APA Technical Changes
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-11-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	PCMH
	C&PS
Jonny Wirth	Carolinas HealthCare System
Chuck Craven	OSPL
Debra Alston	EHNR
Molly Masich	OAH
Alan Miles	Bailey & Dixon LLP
Kim Smith	NCLM
Pat Reuler	NCACC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-11-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPMHL
Tracy Herring	Parole Commission
Eric Zogry	Sentencing Commission
Rob Lucas	Senate Counsel
John Rader	"
Bob Atkinson	AOC
Bobby Byrum	RRL
Mark Sisak	OSBM
Anna Teeter	OSBM
W Fully	NCNA
Elaine Marshall	NCHA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE 3-11-97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LAO Rubicat	CYPC
Jon Gardiner	DTH
Scott Mooney	AP
Bernard Allen	SOS

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 18, 1997

The Senate Judiciary Committee met on Tuesday, March 18, 1997 in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Albertson to explain **Senate Bill 296** - AN ACT TO PROVIDE FOR A PLEDGE FOR PERSONS TO TAKE AT THE BEGINNING OF THEIR CANDIDACIES FOR PUBLIC OFFICE, TO PROVIDE FOR PUBLICITY ABOUT WHO SIGNED THE PLEDGE, AND TO PROVIDE A COMPLAINT MECHANISM FOR VIOLATION OF THE CORRUPT PRACTICES ACT.

Bill Gilkeson, Committee Co-Counsel, was recognized to answer questions from the Committee.

Senator Winner moved to amend the bill on Page 3, Line 39 by inserting after the word "attorneys" the term "to the extent they deem necessary". The motion carried by voice vote.

Senator Gulley moved to amend the bill on Page 4, Line 7 adding at the end of that line the following (applies to Sections 1-5): "This act expires January 1, 2002.". The motion carried by voice vote.

Senator Horton moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Representative Culpepper was recognized to explain **House Bill 202** (SB 160) - AN ACT TO INCREASE THE MINIMUM AMOUNT BY WHICH AN UPSET BID ON REAL PROPERTY IN JUDICIAL SALES AND EXECUTION SALES MUST EXCEED THE REPORTED SALE PRICE, A RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Odom moved to amend the bill on Page 2, Line 38 (see attached amendment). The motion carried by voice vote.

Senator Gulley moved to give the bill a favorable report as amended and roll it into a Committee Substitute. The motion carried by voice vote.

Senator Ballance was recognized to explain **Senate Bill 16** - AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE

PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

Senator Ballance moved to adopt a Proposed Committee Substitute for discussion. The motion carried by voice vote.

Gregg Stahl, with the Department of Correction, and Rob Lubitz, with the N. C. Sentencing Commission, were recognized to answer questions from the Committee.

After discussion by the Committee, Senator Cooper suggested that the Committee Substitute be brought back to the next meeting for further discussion.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
MARCH 18,1997

AGENDA

SB 16	Clarify Community-Based Corrections	Ballance
SB 135	Clarify Sex Offender Registration (HB 139)	Odom
SB 152	Service of Admin. Search Warrants	Cooper
SB 160	Increase Minimum Upset Amount (HB 202)	Hartsell
SB 296	Campaign Pledge	Albertson

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 18, 1997

TO: Senate Judiciary Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: Senate Bill 296 – Campaign Pledge.

Senate Bill 296, introduced by Senator Albertson, would provide that candidates for office in North Carolina be offered the opportunity to sign a pledge at the official beginning of their candidacy. In the pledge, the candidate would promise to conduct a campaign consistent with the principles of morality, ethics, and civility, and to "refrain from campaign practices that in any way detract from the honorable pursuit of elective office."

No candidate would be compelled to sign the pledge. The only official follow-up would be disclosure. The State Board of Elections would be required to compile a list of all candidates who signed the pledge and all who had not. The State Board and county boards would be required to issue and distribute, no later than 21 days before a primary or election, a news release of all signers and non-signers.

Effected by the pledge would be all varieties of candidates seeking office in partisan elections for State and county office. It would include candidates for party nomination, unaffiliated and write-in candidates, and vacancy nominees. The bill does not extend to municipal candidates or candidates in the new nonpartisan elections for superior court judge.

The bill also adds a clause to the existing Corrupt Practices Act to provide for any registered voter to file a complaint under oath alleging violations of that Act. Such a complaint would be investigated by the State Board of Elections or appropriate district attorney. The Corrupt Practices Act, dating from 1931, establishes a variety of misdemeanors and felonies dealing with elections and campaigns. They range from voter fraud and voter intimidation to defamation of a candidate. The Campaign Finance Act, enacted in 1974, provides for a voter complaint under oath, but the older Corrupt Practices Act does not.

The bill would be effective January 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 296

Short Title: Campaign Pledge. (Public)

Sponsors: Senators Albertson; Ballance, Carpenter, Carrington, Conder, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garwood, Gulley, Hartsell, Horton, Hoyle, Jenkins, Jordan, Kerr, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, Odom, Perdue, Phillips, Plyler, Rand, Reeves, Shaw of Cumberland, Warren, Weinstein, and Winner.

Referred to: Judiciary.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PLEDGE FOR PERSONS TO TAKE AT THE BEGINNING OF THEIR CANDIDACIES FOR PUBLIC OFFICE, TO PROVIDE FOR PUBLICITY ABOUT WHO SIGNED THE PLEDGE, AND TO PROVIDE A COMPLAINT MECHANISM FOR VIOLATION OF THE CORRUPT PRACTICES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-106 is amended by adding a new subsection to read:

"(a1) When filing the notice of candidacy, every candidate for selection as the nominee of a political party shall be offered the opportunity to sign the following pledge:

'Date .....

Realizing that the principles of morality, ethics, and civility are essential to the integrity of the democratic process, I pledge to conduct a campaign consistent with these principles. I will refrain from campaign practices that in any way detract from the honorable pursuit of elective office.

Signed .....

Name of candidate

Witness:

.....

.....

(Title of witness)'

Each candidate who chooses to sign the pledge in this subsection shall do so in the presence of the chairman or secretary of the board of elections, State or county, with which that candidate files. In the alternative, the candidate's signature on the pledge may be acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail the pledge, together with notice of candidacy, to the appropriate board of elections."

Section 2. Article 10 of Chapter 163 of the General Statutes is amended by inserting a new section to read:

"**§ 163-114A. Candidate's pledge.**

Every person chosen by a party to fill a vacancy under the provisions of G.S. 163-114 shall be offered the opportunity to sign the pledge set out in G.S. 163-106(a1) in the manner prescribed by that subsection, except that the pledge shall be delivered or mailed to the appropriate board of elections at the time the nomination is certified to that board."

Section 3. Article 9 of Chapter 163 of the General Statutes is amended by inserting a new section to read:

"**§ 163-98.1. Candidate's pledge.**

When a party certifies to the State Board of Elections its nomination of a candidate for office pursuant to G.S. 163-98.1, that candidate shall be offered the opportunity to sign the following pledge:

'Date .....

Realizing that the principles of morality, ethics, and civility are essential to the integrity of the democratic process, I pledge to conduct a campaign consistent with these principles. I will refrain from campaign practices that in any way detract from the honorable pursuit of elective office.

Signed .....

Name of candidate

Witness:

.....

.....

(Title of witness)'

Each candidate who chooses to sign the pledge in this section shall do so in the presence of the chairman or secretary of the State Board of Elections. In the alternative, the candidate's signature on the pledge may be acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail the pledge to the State Board of Elections no later than the date by which the party must certify its nominees to the State Board of Elections pursuant to G.S. 163-98."

Section 4. Article 11 of Chapter 163 of the General Statutes is amended by inserting a new section to read:

"**§ 163-124. Candidate's pledge.**

When filing petitions pursuant to G.S. 163-122(a) or a declaration of intent pursuant to G.S. 163-123(b), every person seeking to become a candidate for elective office under this Article shall be offered the opportunity to sign the following pledge:

'Date .....

Realizing that the principles of morality, ethics, and civility are essential to the integrity of the democratic process, I pledge to conduct a campaign consistent with these principles. I will refrain from campaign practices that in any way detract from the honorable pursuit of elective office.

Signed .....

Name of candidate

Witness:

.....

.....

(Title of witness)'

Each candidate who chooses to sign the pledge in this section shall do so in the presence of the chairman or secretary of the board of elections, State or county, with which that candidate files the documents necessary to commence the candidacy. In the alternative, the candidate's signature on the pledge may be acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail the pledge to the appropriate board of elections no later than the date by which the petitions or declaration of intent must be filed."

Section 5. G.S. 163-22 is amended by adding a new subsection to read:

"(p) The State Board of Elections shall prepare a certified list of all candidates in the State who have signed the pledge provided for in G.S. 163-106(a1), 163-114A, 163-98.1, 163-124, and those who have not. The State Board of Elections shall publicize with the major State media, and require county boards of elections to publicize with local media, the names of candidates who have signed the pledge and those who have not. The publicity shall be by news release, issued by the State Board no later than 21 days before any primary or election, listing the name of every candidate in the State for whom a vote may be counted in that election and reporting whether or not that candidate signed the pledge. The State Board shall direct each county board of elections to issue a news release and distribute it to local media no later than 21 days before each primary or election, listing the name of every candidate for whom a vote may be counted in the county and reporting whether or not that candidate signed the pledge."

Section 6. G.S. 163-278 reads as rewritten:

"§ 163-278. Duty of investigating and prosecuting violations of this Article.

It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, ~~and the~~ on their own or upon complaint under oath by any registered voter. The Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation. The State Board of Elections and the district attorneys are authorized to call upon the Attorney General to furnish

assistance by the State Bureau of Investigation in making the investigations of such violations. The State Board of Elections shall furnish the district attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to violations of this Article."

Section 7. This act becomes effective January 1, 1998, and applies to all candidacies commenced on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 296

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S296-ARR-001 Page 1 of __

Date 3-18-97 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator

moves to amend the bill on page 3, line 39, by inserting after the word "attorneys" the term "to the extent they deem necessary".

SIGNED Leslie Winner
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-18-97

S. B. No. 296 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Gulley
Sen.)

moves to amend the bill on page 4, line 7

( ) WHICH CHANGES THE TITLE

by

adding at the end of that line the following:

"Sections 1 through 5 of this act expire January 1, 2002."

SIGNED

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, March 19, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **296** Campaign Pledge

Draft Number:	PCS 8581
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Judiciary Committee

FROM: General Statutes Commission

DATE: March 17, 1997

RE: **House Bill 202 (Increase Minimum Upset Amount)**

A sale of real property pursuant to a judicial sale (one specifically directed by a court), as well as an execution sale (one held by a sheriff to collect on a judgment), does not become closed until 10 days after the filing of the report of sale. During that 10-day period, any person may file an upset bid offering to purchase the property for an amount exceeding the reported sale price by 10% of the first $1,000 plus 5% of any excess above $1,000, but in any event with a minimum increase of $25. When an upset bid is submitted to the clerk of the superior court with whom the report of sale is filed, the clerk must order a resale of the property. The clerk is required to order a resale of the property as often as qualifying upset bids are submitted.

The $25 minimum upset bid amount has not been increased since the enactment of the judicial sale and execution sale statutes in 1949. This amount does not cover the costs and expenses of a resale, which include advertising costs and attorneys' fees.

House Bill 202 amends G.S. 1-339.25(a), relating to judicial sales, and G.S. 1-339.64(a), relating to execution sales, to specify that the amount of an upset bid must exceed the reported sale price of the property by a minimum of 5% of the reported sale price or $750, whichever is greater. As originally introduced, the bill only increased the absolute minimum amount from $25 to $750, the same absolute minimum amount required by the 1993 amendments to the statutes governing a foreclosure sale under a power of sale in a mortgage or deed of trust. The House amended the percentages and language in these subsections to further conform to the foreclosure sale statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 202*
Committee Substitute Favorable 2/26/97

Short Title: Increase Minimum Upset Amount. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MINIMUM AMOUNT BY WHICH AN UPSET BID ON REAL PROPERTY IN JUDICIAL SALES AND EXECUTION SALES MUST EXCEED THE REPORTED SALE PRICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore ~~sold,~~ sold for an amount exceeding the reported sale price by ~~ten percent (10%) of the first $1000 thereof plus~~ a minimum of five percent (5%) thereof, ~~of any excess above $1000,~~ but in any event with a minimum increase of ~~$25,~~ seven hundred fifty dollars ($750.00). ~~such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business.~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit

required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 2. G.S. 1-339.64(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore ~~sold,~~ sold for an amount exceeding the reported sale price by ~~ten percent (10%) of the first $1000 thereof plus~~ a minimum of five percent (5%) thereof, ~~of any excess above $1000,~~ but in any event with a minimum increase of ~~$25,~~ seven hundred fifty dollars ($750.00). ~~such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business.~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the upset bid filed on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 3. This act becomes effective January 1, 1998, and applies to judicial sales and execution sales occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 202

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H202-ARU-002

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Second Edition

moves to amend the bill on page 2, line 38,
by rewriting the line to read:
"judicial sales when the original order of sale was issued on or after that date and to execution sales when the execution was originally issued on or after that date. This act shall not apply to any judicial sale when the original order of sale has been issued prior to the effective date of this act or to any execution sale held pursuant to any execution originally issued prior to the effective date of this act.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, March 19, 1997

SENATOR COOPER,
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) **202** Increase Minimum Upset Amount

Draft Number:	H202-PCS1161
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 11, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **SENATE BILL 16 - CLARIFY COMMUNITY-BASED CORRECTIONS**
Proposed Committee Substitute
Senator Ballance

Senate Bill 16 implements recommendations of the N.C. Sentencing Commission regarding community-based corrections. (The proposed committee substitute makes technical changes - it combines various sections of the bill in order to place all proposed changes to a particular statute together in one section of the bill)

The bill modifies statutory language defining certain intermediate punishments. Section 1 of the bill renames the Intensive Probation Program as Intensive Supervision, as the program is also available for offenders on parole and post-release supervision. Sections 2 of the bill amends the definition of intensive supervision to require multiple contacts each week by a probation officer, to require curfew restrictions, and to require that offenders be employed or pursuing a course of study or vocational training. It also redefines the intermediate sanction of "electronic monitoring" as "house arrest with electronic monitoring". Section 3 of the bill uses the revised definitions in the list of special conditions of probation.

The bill changes judicial authority to delegate certain responsibilities to the Division of Adult Probation and Parole. Under structured sentencing, the court may, at the time of sentencing, delegate to DAPP the authority to impose additional requirements on an offender who violates probation - without bringing the offender back to court. Section 4 of the bill makes the delegation of authority automatic, unless the presiding judge finds that it is not appropriate. Section 4 also adds curfew with electronic monitoring as an optional condition of probation for an offender sentenced to intermediate punishment, when the offender has violated probation.

Senate Bill 16 modifies the target population for community penalties. Community penalties programs develop plans for offenders who are convicted of misdemeanors or felonies. According to the Sentencing Commission, often an offender is convicted and sentenced on the same day, which does not give the community penalties program sufficient time to develop a plan. Section 5 of the bill expands the Community Penalties statute to allow programs to develop plans for persons charged with misdemeanors and felonies but not yet convicted. The change was recommended by the Community Penalties Division of the AOC.

Section 6 of the bill prohibits community service as a condition of post-release supervision.

The bill would be effective December 1, 1997 and apply to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 16

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors: Senators Ballance; Albertson, Cooper, Dannelly, Gulley, and Miller.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole.~~ Supervision. This program shall provide intensive supervision for ~~probationers,~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole~~ supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11(5) reads as rewritten:

"(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-

262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment."

Section 3. G.S. 15A-1343(b1)(3b) reads as rewritten:

"(3b) Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment."

Section 4. G.S. 15A-1340.11 reads as rewritten:

"**§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

(1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

~~(4) Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~

(4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a

device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program.

(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).

b. Assignment to a residential program.

c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.

d. Intensive probation.

e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or

b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or

c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 5. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

(3b) Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 6. G.S. 15A-1343.2(f) reads as rewritten:

"(f) Delegation to Probation Officer in Intermediate Punishments. -- The court may delegate to the Division of Adult Probation and Parole in the Department of Correction the authority to require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically;

(3) Submit to substance abuse monitoring or treatment; or
(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court."

Section 7. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to

complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Report to the offender's probation officer on a frequency to be determined by the officer; or

(3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to electronic monitoring;

(3) Submit to substance abuse assessment, monitoring or treatment; or

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 8. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 9. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e1) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 10. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S D

S16-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
S16
THIS IS A DRAFT 17-MAR-97 18:11:28
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole.~~ Supervision. This program shall provide intensive supervision for ~~probationers,~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole~~

supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11 reads as rewritten:

"**§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

(1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

~~(4) Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~

(4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or

b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or

c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 3. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

(3b) Submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and

Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was

engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 4. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;

(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;
(2) Report to the offender's probation officer on a frequency to be determined by the officer; or
(3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically;

(3) Submit to substance abuse assessment, monitoring or treatment; or

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 5. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 6. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e1) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-18-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phil Telfer	Atty. Gen. Office
Eric Zogry	Sentencing Commission
John Madler	Sentencing Commission
[signature]	ACC
JoAnn Lamm	NC Div Social Services
Gary O. Bartlett	SBOE
[signature]	CCJPC
[signature]	PRC
Raelee Estes	Prevent Child Abuse NC
Jennifer Tolle	CFTF
Eichelberger	CC&PS
[signature]	DOC
[signature]	Sentencing Commission

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-18-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Bason + crew	WNC-TV
Steve Nelson	Child Fatality Task Force
Jim Barnard	GRNC
Joe DeLuca	RRC
[signature]	CSC
Amanda Digby	NCATL
Jane O. Gray	DOT
E. Spees	"
Jill Miller	NCATL
A. A. Adams	Victim Advocate
Howard Boyce	N.C. Ver

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 20, 1997

The Senate Judiciary Committee met on Thursday, March 20, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Justus to explain **House Bill 139** - AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT AND OTHER STATES ARE REQUIRED TO REGISTER.

Senator Odom, sponsor of the Senate companion bill to HB 139, moved to give the bill a favorable report. The motion carried by voice vote.

Senator Winner was recognized to explain **Senate Bill 228** - AN ACT TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

Joanne Lamm, with the Department of Social Services, was recognized to answer questions from the Committee.

After discussion by the Committee, Senator Cooper announced that the bill would not be voted on at this meeting.

Senator Ballance was recognized to continue the discussion of the Proposed Committee Substitute adopted at the March 18th meeting for **Senate Bill 16** - AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

Senator Soles, acting Chairman, recognized Senator Cooper to explain **Senate Bill 152** - AN ACT TO AUTHORIZE ADMINISTRATIVE SEARCH WARRANTS TO BE SERVED AT HOURS OTHER THAN BETWEEN 8:00 A.M.

AND 8:00 P.M. WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACTIVITY THAT JUSTIFIED THE ADMINISTRATIVE SEARCH WARRANT WILL OCCUR AT OTHER HOURS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Andy Vanore, with the Attorney General's office, was recognized to speak on the bill.

Senator Rand moved to give the bill a favorable report. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
MARCH 20,1997

AGENDA

SB 16	Clarify Community-Based Corrections (Proposed Committee Substitute)	Ballance
HB 139	Clarify Sex Offender Registration (SB 135 - Odom)	Justus
SB 152	Service of Admin. Search Warrants	Cooper
SB 228	Child Abuse/No Report Misdemeanor	Winner

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 18, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **Clarify Sex Offender Registration**
Senate Bill 135 - Senator Odom
House Bill 139 - Representative Justus

Senate Bill 135 and House Bill 139 amend the Sex Offender Registration Act to make it clear that a person convicted of a sex offense in federal court or in a state other than N.C. is required to register in this state.

Under current law, a person who has a reportable conviction is required to maintain registration with the sheriff of the county where the person resides. "Reportable conviction" is defined to include a conviction for a violation of specifically enumerated North Carolina statutes - including rape, incest, sexual exploitation of a minor, taking indecent liberties with a minor, etc. The term also includes a conviction in another state of an offense that would trigger the obligation to register as a sex offender if the crime had occurred in North Carolina. Senate Bill 135 and House Bill 139 would change the definition of a "reportable conviction" to also include conviction in a federal jurisdiction of an offense substantially similar one of the state offenses that require registration.

A person must register immediately upon conviction for a reportable offense where an active term of imprisonment is not imposed. A person who moves to N.C. from outside the state must register within 10 days of establishing residence in this state. A person who is a current resident of this State is required to register within 10 days of release from a penal institution or arrival in a county to live outside a penal institution. A penal institution is currently defined to include a county jail or a detention facility operated by the Division of Prisons. The House bill was amended in committee to broaden the definition of a "penal institution" to include federal or out-of-state detention facilities.

The bill would be effective when it becomes law, and would apply to all persons who are convicted on or after that date or who are released from a penal institution on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 139*
Committee Substitute Favorable 3/3/97

Short Title: Clarify Sex Offender Registration. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT AND OTHER STATES ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(2) reads as rewritten:

"(2) 'Penal institution' ~~means a~~ means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of ~~Correction, or a county jail.~~ Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state."

Section 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and

decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 3. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 135*

Short Title: Clarify Sex Offender Registration. (Public)

Sponsors: Senators Odom; Albertson, Ballance, Conder, Cooper, Dalton, Dannelly, Gulley, Hartsell, Hoyle, Jenkins, Jordan, Kerr, Lee, Martin of Pitt, Martin of Guilford, Miller, Page, Perdue, Phillips, Plyler, Rand, Reeves, Rucho, Shaw of Cumberland, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 2. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 16

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors: Senators Ballance; Albertson, Cooper, Dannelly, Gulley, and Miller.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole.~~ Supervision. This program shall provide intensive supervision for ~~probationers,~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole~~ supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11(5) reads as rewritten:

"(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-

262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment."

Section 3. G.S. 15A-1343(b1)(3b) reads as rewritten:

"(3b) Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment."

Section 4. G.S. 15A-1340.11 reads as rewritten:

"**§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

(1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

~~(4) Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~

(4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a

device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program.

(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).

b. Assignment to a residential program.

c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.

d. Intensive probation.

e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or

b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or

c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 5. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

(3b) Submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 6. G.S. 15A-1343.2(f) reads as rewritten:

"(f) Delegation to Probation Officer in Intermediate Punishments. -- The court may delegate to the Division of Adult Probation and Parole in the Department of Correction the authority to require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically;

(3) Submit to substance abuse monitoring or treatment; or
(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court."

Section 7. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to

complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Report to the offender's probation officer on a frequency to be determined by the officer; or

(3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to electronic monitoring;

(3) Submit to substance abuse assessment, monitoring or treatment; or

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 8. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 9. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e1) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 10. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S D

S16-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
S16
THIS IS A DRAFT 17-MAR-97 18:11:28
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole.~~ Supervision. This program shall provide intensive supervision for ~~probationers,~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole~~

supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11 reads as rewritten:

"§ 15A-1340.11. Definitions.

The following definitions apply in this Article:

(1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

~~(4) Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~

(4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or

b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or

c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 3. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

(3b) Submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and

Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was

engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 4. G.S. 15A-1343.2 reads as rewritten:

"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.

(a) Applicability. -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;

(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;
(2) Report to the offender's probation officer on a frequency to be determined by the officer; or
(3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically;

(3) Submit to substance abuse assessment, monitoring or treatment; or

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 5. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 6. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e1) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, March 20, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **16** Clarify Community-Based Corrections

Draft Number:	PCS 8591
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will take to Sen. Cooper

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 228*

Short Title: Child Abuse/No Report Misdem. (Public)

Sponsors: Senators Winner; Allran, Cooper, and Martin of Guilford.

Referred to: Judiciary.

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-543 reads as rewritten:

"**§ 7A-543. Duty to report child abuse, neglect, dependency, or death due to maltreatment.**

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7A-517, or has died as the result of maltreatment, shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the Department's investigation of the alleged abuse, neglect, dependency, or death as a result of maltreatment. Any person or institution

required by this section to report child abuse, neglect, or dependency or a child's death due to suspected maltreatment, who knowingly and willfully fails to make the report, or who knowingly and willfully prevents another from making the report, shall be guilty of a Class 3 misdemeanor.

Upon receipt of any report of child sexual abuse in a day care facility or day care home, the Director shall notify the State Bureau of Investigation within 24 hours or on the next work day. If child sexual abuse in a day care facility or day care home is not alleged in the initial report, but during the course of the investigation there is reason to suspect that child sexual abuse has occurred, the Director shall immediately notify the State Bureau of Investigation. Upon notification that child sexual abuse may have occurred in a day care facility or day care home, the State Bureau of Investigation may form a task force to investigate the report."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 18, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 152 - Administrative Search Warrant/When Served** - Senator Cooper

Senate Bill 152 is a recommendation of the Environmental Review Commission. This bill would permit a search warrant obtained by a state administrative agency to be served at times other than between 8:00 a.m. and 8:00 p.m. when the circumstances justify. If the magistrate, judge, or other authorized official is satisfied that the condition, object, activity, or circumstance that legally justifies the search in the first place, is occurring or will occur at times other than between 8:00 a.m. and 8:00 p.m., then the issuing official can authorize the search warrant to be served at times specified in the warrant.

Warrants to be served under these special circumstances have to meet all the other conditions for an administrative search warrant as set out in G.S. 15-27.2 (a copy of which is attached). This statute has requirements including that:

1) specific authorization for that type of search or inspection be included in statute.
2) the application for a search warrant contain specific details as to the place to be search or inspected, the legal program that permits the search or inspection, and the probable cause justifying the search or inspection.
3) the affidavit in support of the application for a search warrant be sworn.

Warrants not served within 48 hours expire.

The bill becomes effective October 1, 1997.

S152-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 15-27.2. Warrants to conduct inspections authorized by law.

(a) Notwithstanding the provisions of Article 11 of Chapter 15A, any official or employee of the State or of a unit of county or local government of North Carolina may, under the conditions specified in this section, obtain a warrant authorizing him to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.

(b) The warrant may be issued by any magistrate of the general court of justice, judge, clerk, or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected.

(c) The issuing officer shall issue the warrant when he is satisfied the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection which naturally includes that property, or that there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property;

(2) An affidavit indicating the basis for the establishment of one of the grounds described in (1) above must be signed under oath or affirmation by the affiant;

(3) The issuing official must examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit;

(d) The warrant shall be validly issued only if it meets the following requirements:

(1) Except as provided in subsection (e), it must be signed by the issuing official and must bear the date and hour of its issuance above his signature with a notation that the warrant is valid for only 24 hours following its issuance;

(2) It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;

(3) It must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;

(4) It must be attached to the affidavit required to be made in order to obtain the warrant.

(e) Any warrant issued under this section for a search or inspection shall be valid for only 24 hours after its issuance, must be personally served upon the owner or possessor of the property between the hours of 8:00 A.M. and 8:00 P.M. and must be returned within 48 hours. If the warrant, however, was procured pursuant to an investigation authorized by G.S. 58-79-1, the warrant may be executed at any hour, is valid for 48 hours after its issuance, and must be returned without unnecessary delay after its execution or after the expiration of the 48 hour period if it is not executed. If the owner or possessor of the property is not present on the

(c) 1944-1996 by The Michie Company, a division of Reed Elsevier Inc., and Reed Elsevier Properties Inc. All Rights Reserved

property at the time of the search or inspection and reasonable efforts to locate the owner or possessor have been made and have failed, the warrant or a copy thereof may be affixed to the property and shall have the same effect as if served personally upon the owner or possessor.

(f) No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this section shall be competent as evidence in any civil, criminal or administrative action, nor considered in imposing any civil, criminal, or administrative sanction against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity or circumstance which it was the legal purpose of the search or inspection to discover; but this shall not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances.

(g) The warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 11 of Chapter 15A of the General Statutes of North Carolina.

(1967, c. 1260; 1979, c. 729; 1983, c. 294, ss. 1, 2; c. 739, ss. 1, 2.)

(c) 1944-1996 by The Michie Company, a division of Reed Elsevier Inc., and Reed Elsevier Properties Inc. All Rights Reserved

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 152*

Short Title: Admin. Search Warrants/When Served. (Public)

Sponsors: Senators Cooper; Horton and Odom.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADMINISTRATIVE SEARCH WARRANTS TO BE SERVED AT HOURS OTHER THAN BETWEEN 8:00 A.M. AND 8:00 P.M. WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACTIVITY THAT JUSTIFIES THE ADMINISTRATIVE SEARCH WARRANT WILL OCCUR AT OTHER HOURS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-27.2(e) reads as rewritten:

"(e) Any warrant issued under this section for a search or inspection shall be valid for only 24 hours after its issuance, must be personally served upon the owner or possessor of the property between the hours of 8:00 A.M. and 8:00 P.M. and must be returned within 48 hours. However, if there is probable cause to believe that the condition, object, activity, or circumstance that legally justifies the search or inspection is occurring or will occur at times other than between the hours of 8:00 A.M. and 8:00 P.M., then the warrant may authorize the search or inspection to be made during times in addition to the hours between 8:00 A.M. and 8:00 P.M., in which case the times during which the search or inspection may occur shall be specifically set out on the face of the warrant. If the warrant, however, was procured pursuant to an investigation authorized by G.S. 58-79-1, the warrant may be executed at any hour, is valid for 48 hours after its issuance, and must be returned without unnecessary delay after its execution or after the expiration of the 48 hour period if it is not executed. If the owner or possessor of the property is not present on the property at the time of the search or inspection and reasonable efforts to locate the

owner or possessor have been made and have failed, the warrant or a copy thereof may be affixed to the property and shall have the same effect as if served personally upon the owner or possessor."

Section 2. This act becomes effective 1 October 1997.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT

Sen. Roy A. Cooper, III, Chairman

Thursday, March 20, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **139** Clarify Sex Offender Registration
Sequential Referral: None
Recommended Referral: None

S.B. **152** Admin. Search Warrants/When Served
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-20-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Rob Lubitz	Sentencing Commission
Pat Yancey	State Council for Social Legislation
Jo B. McCants	Admin. Office of the Courts
Anne Dinan	NCBA
Amanda Digby	NCATL
Lee Rivenbark	CYJC
JoAnn Lawn	DSS
AL DEITCH	YOUTH ADVOCACY + INVOLVEMENT OFFICE
Thomas V. Bennett	N.C. Child Fatality Task Force
Carter Maynard	Prevent Child Abuse NC
Robert Lee Guy	DOC – DAPP
Mike Carpenter	NCPASA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-20-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Broadwell	Center for Legislative Counsel
Marla Brooks	DCR/HR - DWQ
Eric Zogry	Sentencing Commission

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 25, 1997

The Senate Judiciary Committee met on Tuesday, March 25, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Odom to explain **Senate Bill 370** - AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

David Robinson, an attorney with Moore & Van Allen and a consultant for the International Section of the N. C. Bar Association, was recognized to answer questions from the Committee.

Senator Odom moved to amend the bill on Page 1, Line 18 by deleting the words "this right cannot be waived." and substituting the words "a waiver thereof prior to the proceeding or hearing is ineffective.". The motion carried by voice vote.

Senator Lucas moved to give the bill a favorable report as amended and make it into a Committee Substitute. The motion carried by voice vote.

Senator Odom was recognized to explain **Senate Bill 371** - AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

After discussion by the Committee, Senator Cooper asked that the bill be looked at further and brought back to the Committee at a future meeting.

Senator Odom was recognized to explain **Senate Bill 372** - AN ACT TO REMOVE, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE.

After discussion by the Committee, Senator Cooper asked that the bill be looked at further and brought back to the Committee at a future meeting.

Senator Odom was recognized to explain **Senate Bill 373** - AN ACT TO EXEMPT INTERNATIONAL COMMERCIAL ARBITRATION AWARDS AS CONTRACTS AGAINST PUBLIC POLICY.

After discussion by the Committee, Senator Cooper asked that the bill be looked at further and brought back to the Committee at a future meeting.

Senator Rand was recognized to explain **Senate Bill 393** - AN ACT TO MANDATE THE REVOCATION OF A PERSON'S DRIVERS LICENSE OR LIMITED DRIVING PRIVILEGE FOR WILLFUL FAILURE TO COMPLETE COURT-ORDERED COMMUNITY SERVICE.

Senator Rand moved to adopt a Proposed Committee Substitute to Senate Bill 393 for discussion. The motion carried by voice vote.

Senator Odom moved to give the Proposed Committee Substitute a favorable report. The motion carried by voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
MARCH 25,1997

AGENDA

SB 39	Modify Setoff Debt Collection	L. Shaw
SB 162	Adoption Technical Amendments	Hartsell
SB 370	Commercial Arbitration Amend.	Odom
SB 371	International Comm. Conciliation	Odom
SB 372	Time Limits for Foreign Service	Odom
SB 373	Contracts Against Public Policy	Odom
SB 393	Fail Comm. Service/Revoke Lic.	Rand
SB 394	Modify Victims Compen. Act 2	Rand

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 370 - Commercial Arbitration Amendments** - Senator Odom

Senate Bill 370 amends the International Commercial Arbitration Act by making international commercial arbitration awards reached outside of North Carolina enforceable in North Carolina under the International Commercial Arbitration Act and by giving every party the right to be represented by an attorney in these arbitrations. This bill is a recommendation of the North Carolina Bar Association.

Section 1 of the bill adds G.S. 1-567.65 (copy attached) to the provisions of International Commercial Arbitration Act that are enforceable in North Carolina despite the fact that the arbitration is in another place other than North Carolina. G.S. 1-567.65 provides that upon the application of a party to an arbitral award to the superior court, the court may enter a judgment which may thereafter be enforced as any other judgment entered in the State.

Section 2 amends G.S. 1-567.48 by adding a new subsection that ensures that a party to an international commercial arbitration shall have a right to be represented by an attorney, and that this right may not be waived.

This bill would become effective when it becomes law and would apply to proceedings initiated on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 1-567.65. Confirmation and enforcement of awards.

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, upon application of a party, the superior court shall confirm an arbitral award, unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 shall have expired or been waived by all the parties. Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and enforced as any other judgment or decree. The superior court may award costs of the application and of the subsequent proceedings.

(1991, c. 292, s. 1.)

(c) 1996 by Michie, a division of Reed Elsevier Inc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 370

Short Title: Commercial Arbitration Amend. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-567.31(b) reads as rewritten:

"(b) The provisions of this ~~Article~~ Article, except ~~G.S. 1-567.38 and G.S. 1-567.39,~~ G.S. 1-567.38, 1-567.39, and 1-567.65, apply only if the place of arbitration is in this State."

Section 2. G.S. 1-567.48 is amended to read as follows:

"**§ 1-567.48. Equal treatment of ~~parties.~~ parties; representation by attorney.**

(a) The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(b) A party has the right to be represented by an attorney at any proceeding or hearing under this Article. This right cannot be waived."

Section 3. This act is effective when it becomes law and applies to proceedings initiated on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-25-91

S. B. No. 370 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) ODOM
Sen.)

1 moves to amend the bill on page 1, line 18
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORDS "THIS RIGHT CANNOT BE
4 WAIVED." AND SUBSTITUTING THE WORDS
5 "A WAIVER THEREOF PRIOR TO THE PROCEEDING OR
6 HEARING IS INEFFECTIVE."
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Tuesday, April 01, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **370** Commercial Arbitration Amendment

Draft Number:	PCS A590
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 371 - International Commercial Conciliation** - Senator Odom

Senate Bill 371 would amend the International Commercial Arbitration statute by adding provisions for conciliation in addition to arbitration. This bill is a recommendation of the North Carolina Bar Association.

This bill adds conciliation processes to the arbitration processes recognized under North Carolina law for disputes arising in international commercial transactions as defined in the law.

Conciliation provides for an informal process directed by a independent impartial person whose job is to help the parties to a dispute reach an amiable settlement. Under this procedure, the discussions can be in any form the conciliator deems appropriate and agreed to by the parties.

The bill provides protections to the parties to this type of settlement process by insuring that all evidence or admissions made in the conciliation process are inadmissible in any subsequent court proceeding. The bill also provides that any applicable time limits, including statutes of limitation, are stayed during the conciliation process and for 10 days beyond the termination. The bill specifies when a conciliation is terminated, the enforceability of any agreement arising from the conciliation, and how the costs of the process are to be shared between the parties. The bill also gives protection against conciliation being deemed consent to jurisdiction.

This bill would become effective September 1, 1997 and would apply to international commercial disputes made subject to conciliation on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 371

Short Title: International Commercial Conciliation. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads as rewritten:

"International Commercial ~~Arbitration.~~ Arbitration and Conciliation."

Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions".

Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in Part 1 of Article 45B of Chapter 1 of the General Statutes as codified in Section 2 of this act.

Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of Article 45B of Chapter 1 of the General Statutes, to be entitled "International Commercial Arbitration".

Section 5. G.S. 1-567.30 reads as rewritten:

"**§ 1-567.30. Preamble and short title.**

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or conciliation proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such ~~arbitration.~~ arbitration or conciliation. This Article

shall be known as the North Carolina International Commercial Arbitration and Conciliation Act".

Section 6. G.S. 1-567.31 reads as rewritten:

"**§ 1-567.31. Scope of application.**

(a) This Article applies to international commercial ~~arbitration,~~ arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this ~~Article~~ Article, except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation, respectively, is international if:

(1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to ~~arbitration~~ arbitration, conciliation, or mediation, or may be submitted to ~~arbitration~~ arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991."

Section 7. Article 45B of Chapter 1 of the General Statutes is amended by adding a new Part to read:

"Part 3. International Commercial Conciliation.

"§ 1-567.68. Appointment of conciliators.

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part.

"§ 1-567.69. Representation.

The parties may appear in person or be represented or assisted by any person of their choice.

"§ 1-567.70. Report of conciliators.

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator.

"§ 1-567.71. Confidentiality.

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to

be given. This subsection does not limit the admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled.

"§ 1-567.72. Stay of arbitration; resort to other proceedings.

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings.

"§ 1-567.73. Termination of conciliation.

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.

(2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.

(3) On the date of the agreement, a conciliation agreement signed by all of the parties.

(4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.

(2) On the date of the agreement, a conciliation agreement signed by some of the parties.

(3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

"§ 1-567.74. Enforceability of decree.

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration.

"§ 1-567.75. Costs.

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section 'costs' includes all of the following:

(1) A reasonable fee to be paid to the conciliators.

(2) Travel and other reasonable expenses of the conciliators.

(3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.

(4) The cost of any expert advice requested by the conciliators, with the consent of the parties.

(5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

"§ 1-567.76. Effect on jurisdiction.

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails.

"§ 1-567.77. Immunity of conciliators and parties.

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall not be held liable in an action for damages resulting from any act or omission in the performance of that individual's role as a conciliator in any proceeding subject to this Part."

Section 8. This act becomes effective September 1, 1997, and applies to any international commercial disputes that are subject on or after that date to conciliation pursuant to Article 45B of Chapter 1 of the General Statutes, as amended by this act.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 372 - Time Limits For Foreign Service** - Senator Odom

Senate Bill 372 amends the time that a civil summons, or an alias and pluries summons, can remain valid when the defendant is located outside of the United States. This bill is a recommendation of the North Carolina Bar Association.

This bill amends the Rules of Civil Procedures, G.S. 1A-1, Rule 4(d), which governs the extension of time to serve summons and alias and pluries summons in civil cases involving defendants not in the United States by eliminating the time limit for service. Under this bill, a summons, or an alias or pluries summons, to be served on an out of country defendant, would not have to be endorsed for an extension of time to complete service within 90 days of issuance or the last prior extension in order to remain alive. Under the bill these summons may remain effective without further extension until served.

This bill would become effective when it becomes law and would apply to actions begun on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Rule 4. Process.

(a) *Summons - Issuance; who may serve.* - Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons - Contents.* - The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff 's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) *Summons - Return.* - Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) *Summons - Extension; endorsement, alias and pluries.* - When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90

(c) 1996 by Michie, a division of Reed Elsevier Inc.

days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension.

(e) *Summons - Discontinuance.* - When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

(c) 1996 by Michie, a division of Reed Elsevier Inc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 372

Short Title: Time Limits for Foreign Service. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- Extension; endorsement, alias and pluries. -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, for service upon a defendant in a place not within the United States, no time limits apply to securing an endorsement under subdivision (1) of this subsection and to suing out an alias or pluries summons under subdivision (2) of this subsection.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension."

Section 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 373 - Contracts Against Public Policy** - Senator Odom

Senate Bill 373 amends two sections of the law making certain types of contract provisions in contracts to improve real property and contracts with forum selection against public policy, by exempting from these statutes international commercial arbitration awards. This bill is a recommendation of the North Carolina Bar Association.

Section 1 of the bill amends G.S. 22B-2 by adding a sentence that provides that a provision in a contract for improvements to real property, or providing for materials to improve real property, is not void as against public policy if it makes the contract subject to the laws of another state or nation, or provides that the exclusive forum to resolve the dispute is in another state or nation, when the matter is an international commercial transaction, as defined in G.S. 1-567.31, resolved by an arbitration award.

Section 2 amends G.S. 22B-3 by adding a sentence that provides that a provision in a contract that requires prosecution of the contract in another state is not void as against public policy if it is an international commercial transaction resolved pursuant to an arbitration award.

This bill will become effective when it becomes law and will apply to contracts entered into on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 1-567.31. Scope of application.

(a) This Article applies to international commercial arbitration, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this Article except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration is international if:

(1) The parties to the arbitration agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(c) 1996 by Michie, a division of Reed Elsevier Inc.

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration Act. This Article shall not apply to any agreement executed prior to June 13, 1991.

(1991, c. 292, s. 1.)

(c) 1996 by Michie, a division of Reed Elsevier Inc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 373

Short Title: Contracts Against Public Policy Exempt. (Public)

Sponsors: Senators Odom; and Rand.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT INTERNATIONAL COMMERCIAL ARBITRATION AWARDS AS CONTRACTS AGAINST PUBLIC POLICY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22B-2 reads as rewritten:

"**§ 22B-2. Contracts to improve real property.**

A provision in any contract, subcontract, or purchase order for the improvement of real property in this State, or the providing of materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process is located in another state. This section does not apply to any provision providing for an exclusive forum for any litigation, arbitration, or other dispute resolution process in another state or nation or providing for a choice of law of another state or nation, pursuant to an arbitration award, as defined in G.S. 1-567.32, that is both international under G.S. 1-567.31(c) and commercial under G.S. 1-567.31(e)."

Section 2. G.S. 22B-3 reads as rewritten:

"**§ 22B-3. Contracts with forum selection provisions.**

Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the

consent of all parties to the contract at the time that the dispute arises. This section does not apply to a provision requiring prosecution of an action or arbitration of any dispute in another state or nation pursuant to an arbitration award, as defined in G.S. 1-567.32, that is both international under G.S. 1-567.31(c) and commercial under G.S. 1-567.31(e)."

Section 3. This act is effective when it becomes law and applies to arbitration awards entered on or after that date that are subject to Article 45B of Chapter 1 of the General Statutes.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **SENATE BILL 393 - FAIL COMMUNITY SERVICE/ REVOKE LICENSE**
Senator Rand

Senate Bill 393 would require the revocation of a person's drivers license or limited driving privilege for willful failure to complete court-ordered community service. It would also delete a requirement that the chief district court judge be consulted and approve the appointment of the district's community service coordinator for programs administered by the Department of Crime Control and Public Safety.

Section 1 of the bill requires that the limited driving privilege granted a person convicted of impaired driving be revoked until any delinquent community service requirement has been met. G.S. 20-179.4 requires the Department of Crime Control and Public Safety to conduct a community service alternative punishment for persons convicted of impaired driving and sentenced to Level 3, 4, or 5 punishment. At those levels, a defendant is subject to a fine and a term of imprisonment which must be suspended, on any or all of three conditions - one of which is to perform community service. Level 5 may require 24 hours, which must be completed within 30 days; Level 4 may require 48 hours, completed within 60 days; Level 5 may require 72 hours, completed within 90 days. Current law provides that the court may extend the time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the specified time limits. G.S. 20-179.4 also requires that all persons serving a community service sentence pay a $100 fee. A willful failure to pay the fee or complete the work requires that the court revoke any limited driving privilege issued in the impaired driving case.

Sections 1 and 2 of the bill delete the requirement that the chief district court judge consult in or approve the appointment of the community service coordinator. In addition to the community

service alternative program for impaired driving offenders, G.S. 143B-475.1 authorizes the Department of Crime Control and Public Safety to conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. Under current law, the Secretary of CC&PS is to assign at least one coordinator to each district court to assure and report to the court the person's compliance with the community service sentence. Currently, the appointment of each coordinator must be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned.

Section 3 of the bill amends the law regarding mandatory revocation of licenses by DMV to provide that, on the basis of information provided by the clerk of court, DMV shall revoke the license of any person who has willfully failed to complete court-ordered community service when the court has issued a revocation order. The revocation continues in effect until DMV receives certification from the clerk of court that the person has completed the court-ordered community service.

Section 4 makes the bill effective October 1, 1997 and applicable to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on o after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 393

Short Title: Fail Comm. Service/Revoke License. (Public)

Sponsors: Senators Rand; Ballantine, Cooper, Gulley, Miller, Perdue, Plyler, Reeves, Soles, and Warren.

Referred to: Judiciary.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MANDATE THE REVOCATION OF A PERSON'S DRIVERS LICENSE OR LIMITED DRIVING PRIVILEGE FOR WILLFUL FAILURE TO COMPLETE COURT-ORDERED COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179.4 reads as rewritten:

"**§ 20-179.4. Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.**

(a) The Department of Crime Control and Public Safety ~~must~~ shall conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of Crime Control and Public Safety ~~must~~ shall assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of one hundred dollars ($100.00) ~~must~~ shall be paid by all persons serving a community service sentence. That fee ~~must~~ shall be paid to the clerk of court in the county in which the person is convicted. The fee ~~must~~ shall be paid in full within two weeks unless the court, upon a showing of hardship by the person,

allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section ~~must~~ shall be deposited in the general fund.

(e) The coordinator ~~must~~ shall report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. ~~In such cases, the~~ The court ~~must~~ shall then conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court ~~must~~ shall revoke any limited driving privilege issued in the impaired driving ~~case,~~ case until the community service requirement has been met and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation."

Section 2. G.S. 143B-475.1 reads as rewritten:

"**§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.**

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. ~~The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned.~~ Each county ~~must~~ shall provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars ($100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee ~~must~~ shall be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee ~~must~~ shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason ~~must~~ shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee ~~must~~ shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before he pays the fee by the court in which he is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is

paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary ~~is authorized to~~ may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, 'person' includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection ~~must~~ shall be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works.

(f) The Community Service Staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if thee is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States Mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least ten days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

Section 3. G.S. 20-17(b) reads as rewritten:

"(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division ~~shall~~ shall:

(1) ~~ensure~~ Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or ~~G.S. 50-13.12.~~ G.S. 50-13.12; or

(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation."

Section 4. This act becomes effective October 1, 1997, and applies to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S393-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 393
THIS IS A DRAFT 24-MAR-97 22:02:29
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Fail Comm. Service/Revoke License. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MANDATE THE REVOCATION OF A PERSON'S DRIVERS LICENSE OR LIMITED DRIVING PRIVILEGE FOR WILLFUL FAILURE TO COMPLETE COURT-ORDERED COMMUNITY SERVICE AND TO ELIMINATE THE REQUIREMENT FOR JUDICIAL INVOLVEMENT IN THE APPOINTMENT OF COMMUNITY SERVICE COORDINATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179.4 reads as rewritten:

"**§ 20-179.4. Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.**

(a) The Department of Crime Control and Public Safety ~~must~~ shall conduct a community service alternative punishment program for persons sentenced under G.S. 20-179(i), (j) or (k).

(b) The Secretary of Crime Control and Public Safety ~~must~~ shall assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service

sentence. ~~The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court judge in the district to which the coordinator is assigned.~~ Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county.

(c) A fee of one hundred dollars ($100.00) ~~must~~ shall be paid by all persons serving a community service sentence. That fee ~~must~~ shall be paid to the clerk of court in the county in which the person is convicted. The fee ~~must~~ shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so.

(d) Fees collected under this section ~~must~~ shall be deposited in the general fund.

(e) The coordinator ~~must~~ shall report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. ~~In such cases, the~~ The court ~~must~~ shall then conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court ~~must~~ shall revoke any limited driving privilege issued in the impaired driving ~~case,~~ case until the community service requirement has been met and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation."

Section 2. G.S. 143B-475.1 reads as rewritten:

"**§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.**

(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. ~~The appointment of each coordinator shall be made in consultation with and is~~

~~subject to the approval of the chief district court judge in the district to which the coordinator is assigned.~~ Each county ~~must~~ shall provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county.

(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of one hundred dollars ($100.00) shall be paid by all persons who participate in the program or receive services from the program staff. If the person is convicted in a court in this State, the fee ~~must~~ shall be paid to the clerk of court in the county in which he is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee ~~must~~ shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason ~~must~~ shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee ~~must~~ shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before he begins his community service, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before he pays the fee by the court in which he is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin his community service before the fee is paid by the official or agency representing the State in the agreement.

Fees collected pursuant to this subsection shall be deposited in the General Fund.

(c) The Secretary ~~is authorized to~~ may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, 'person' includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is

supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection ~~must~~ shall be furnished to the individual at the time of assignment of community service work by the community service coordinator.

(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works.

(f) The Community Service Staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if thee is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States Mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least ten days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if

the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

Section 3. G.S. 20-17(b) reads as rewritten:

"(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division ~~shall~~ shall:

(1) ~~ensure~~ Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or ~~G.S. 50-13.12.~~ G.S. 50-13.12; or

(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation."

Section 4. This act becomes effective October 1, 1997, and applies to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Wednesday, March 26, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **393** Fail Comm. Service/Revoke License

Draft Number:	PCS 7637
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

SENATE JUDICIARY COMMITTEE — 3-25-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
PB Powell	ACC
Deborah Ross	ACLU
Jane Wine	NCBA
Whitney Obrig	DMHDDSAS
Amanda Digby	NCATL
Alice Manning	NCDOR
Nancy Pomeranz	DOR
[illegible]	V.C. Comp Comm.
[illegible]	CCPS
Doris Fraser	NC CWA Political Council
[illegible]	CCPS
Ed Regan	N.C.A.C.C
Andy Romanet	N.C.L.M.
[illegible]	NCBA
Paul Stock	" " "
A-A- Adams	Victim Advocate
[illegible]	NCBA
Wade Mansfield	Pender Cty

MINUTES
SENATE JUDICIARY COMMITTEE
MARCH 27, 1997

The Senate Judiciary Committee met on Thursday, March 27, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Winner to explain **Senate Bill 148** - AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

Senator Winner moved to adopt a Proposed Committee Substitute to Senate Bill 148 for discussion. The motion carried by voice vote.

Senator Winner reviewed the changes in the present law which would occur if this legislation is adopted.

The following people were recognized to speak on the bill:

Joe Parker, Director of the Governor's Highway Safety Program

Bill Hall, UNC Highway Safety Research Center

Sgt. J. W. Piatt, Durham Police Department, Traffic Enforcement

Dr. David Cline, Emergency Room Physician at Wake Memorial Hospital, Raleigh.

After discussion by the Committee, Senator Winner asked members bring their comments to her and she would have another committee substitute drawn up.

Senator Larry Shaw was recognized to explain **Senate Bill 39** - AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

Greg Radford, Dept. of Revenue, and Alice Manning, Manager of the Setoff Program with the Dept. of Revenue, were recognized to answer questions from the Committee.

Senator Kerr moved to give the bill a favorable report and re-refer it to the Finance Committee. The motion carried by voice vote.

There being no further business, the meeting was adjourned.

Roy A. Cooper, III — Susan M. Moore

Sen. Roy A. Cooper, III, Chairman . Susan M. Moore, Comm. Clerk

SENATE JUDICIARY COMMITTEE
MARCH 27,1997

AGENDA

SB 39	Modify Setoff Debt Collection	L. Shaw
SB 148	Motor Vehicle Occupant Restraints	Winner

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 148*

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors: Senators Winner, Allran; Cooper, Dannelly, and Gulley.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each ~~front seat~~ occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208~~ shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any~~ Any person violating this section shall have committed an infraction and shall pay a fine of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(f) reads as rewritten:

"(f) No ~~drivers license points or~~ insurance surcharge shall be assessed on account of violation of this section. Drivers license points shall be assigned for a violation of this section."

Section 4. G.S. 20-135.2A(h) is repealed.

Section 5. G.S. 20-135.2B (b)(6) is repealed.

Section 6. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 7. G.S. 20-135.2B(d) reads as rewritten:

"(d) No ~~drivers license points or~~ insurance surcharge shall be assessed on account of violation of this section. Drivers license points shall be assigned for a violation of this section."

Section 8. G.S. 20-135.3 reads as rewritten:

"**§ 20-135.3. Seat belt anchorages for rear seats of motor vehicles.**

Every new motor vehicle registered in this State and manufactured, assembled or sold after July 1, 1966, shall be equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts for the rear seat of the motor vehicle. Such anchorage units at the attachment points shall be of such construction, design and strength to support a loop load strength of not less than 5,000 pounds for each belt.

The provisions of this section shall apply to passenger vehicles of nine-passenger capacity or less, except motorcycles. A conviction of violating this section shall be considered a moving violation."

Section 9. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 10. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting a child of less than 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be ~~met when the child is four years of age or older by securing the child in a seat safety belt.~~ met:

(1) When a child is less than five years of age and less than 60 pounds in weight by securing the child in an approved safety seat; and

(2) When a child is five years of age or older or 60 or more pounds by securing the child in a seat safety belt."

Section 11. G.S. 20-137.1(d) reads as rewritten:

"(d) No ~~driver license points or~~ insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory

negligence per se nor shall it be evidence of negligence or contributory negligence. Drivers license points shall be assigned for a violation of this section."

Section 12. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S148-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 148
THIS IS A DRAFT 27-MAR-97 09:16:59
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Motor Vehicle Occupant Restraints. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE MOTOR VEHICLE OCCUPANT RESTRAINT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(a) reads as rewritten:

"(a) Each ~~front seat~~ occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts ~~in compliance with Federal Motor Vehicle Safety Standard No. 208~~ shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. ~~Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be~~

~~restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.~~"

Section 2. G.S. 20-135.2A(e) reads as rewritten:

"(e) ~~Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any~~ Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 3. G.S. 20-135.2A(f) reads as rewritten:

"(f) No ~~drivers license points or~~ insurance surcharge shall be assessed on account of violation of this section. A driver's failure to comply with the requirements of this section while operating a passenger motor vehicle shall be considered a moving violation for purposes of G.S. 20-16(c).

Section 4. G.S. 20-135.2A(h) is repealed.

Section 5. G.S. 20-135.2B (b)(6) is repealed.

Section 6. G.S. 20-135.2B(c) reads as rewritten:

"(c) Any person violating this section shall have committed an infraction and shall pay a ~~fine~~ penalty of twenty-five dollars ($25.00). ~~An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~ A person ~~convicted of an infraction~~ found responsible for a violation of this section may not be assessed court costs."

Section 7. G.S. 20-135.2B(d) reads as rewritten:

"(d) No ~~drivers license points or~~ insurance surcharge shall be assessed on account of violation of this section. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c)."

Section 8. Section 3 of Chapter 672 of the 1993 Session Laws is repealed.

Section 9. G.S. 20-137.1(a) reads as rewritten:

"(a) Every driver who is transporting a child of less than ~~12~~ 16 years of age shall have the child properly secured in ~~a child~~ an age-appropriate passenger restraint ~~system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.~~ system.

When a child is less than five years of age and less than 60 pounds in weight, the requirements of this section shall be met by securing the child in an approved safety seat which meets federal standards applicable at the time of its manufacture.

When a child is five years of age or older or is 60 pounds or more in weight, the requirements of this section may be met by securing the child in a seat safety belt."

Section 10. G.S. 20-137.1(d) reads as rewritten:

"(d) No ~~driver license points or~~ insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c)."

Section 11. This act becomes effective July 1, 1998.

§ 20-135.2A. Seat belt use mandatory.

(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.

(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural or commercial purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as

justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(e) Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this section and shall include a report of findings in its report on highway safety no later than October 1, 1988. (1985, c. 222, s. 1; 1987, c. 623; 1991, c. 448; 1994, Ex. Sess., c. 5.)

§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child.

(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner.

(3) An emergency situation exists.

(4) The vehicle is being operated in a parade pursuant to a valid permit.

(5) The vehicle is being operated in an agricultural enterprise.

(6) The vehicle is being operated in a county that has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section. (1993 (Reg. Sess., 1994), c. 672, s. 1; 1995, c. 163, s. 7.)

§ 20-137.1. Child restraint systems required.

(a) Every driver who is transporting a child of less than 12 years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which meets federal standards applicable at the time of its manufacture. The requirements of this section may be met when the child is four years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) when the child's personal needs are being attended to; (iii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iv) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under four years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218; 1993 (Reg. Sess., 1994), c. 748, s. 1.)

SL93-672

CHAPTER 672
HOUSE BILL 27

AN ACT TO RESTRICT THE TRANSPORTATION OF CHILDREN UNDER THE AGE OF TWELVE IN THE OPEN BED OR OPEN CARGO AREA OF A VEHICLE.

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-135.2B. Transporting children under 12 years of age in open bed or open cargo area of a vehicle prohibited; exceptions.

(a) The operator of a vehicle having an open bed or open cargo area shall insure that no child under 12 years of age is transported in the bed or cargo area of that vehicle. An open bed or open cargo area is a bed or cargo area without permanent overhead restraining construction.

(b) Subsection (a) of this section shall not apply when:

(1) An adult is present in the bed or cargo area of the vehicle and is supervising the child;

(2) The child is secured or restrained by a seat belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208, installed to support a load strength of not less than 5,000 pounds for each belt, and of a type approved by the Commissioner;

(3) An emergency situation exists;

(4) The vehicle is being operated in a parade pursuant to a valid permit.

(5) The vehicle is being operated in an agricultural enterprise; or

(6) the vehicle is being operated in a county which has no incorporated area with a population in excess of 3,500.

(c) Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section."

Sec. 2. The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this act and to inform the public on the requirements and penalties specified in this law.

Sec. 3. The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this act and shall include a report of findings in its report on highway safety no later than January 1, 1998.

Sec. 4. This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1994.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, and applicable to all offenses committed on or after that date, rewrote subsection (d).

§ 20-14. Duplicate licenses.

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars ($10.00) and giving the Division satisfactory proof that any of the following has occurred:

(1) The person's license has been lost or destroyed.

(2) It is necessary to change the name or address on the license.

(3) Because of age, the person is entitled to a license with a different color photographic background.

(4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5; 1979, c. 667, s. 41; 1981, c. 690, s. 11; 1983, c. 443, s. 3; 1991, c. 682, s. 2; c. 689, s. 327; 1991 (Reg. Sess., 1992), c. 1007, s. 28.)

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. — The 1991 (Reg. Sess., 1992) amendment, effective July 21, 1992, rewrote this section.

CASE NOTES

Quoted in State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838 (1970).

§ 20-15. Authority of Division to cancel license.

(a) The Division shall have authority to cancel any driver's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division. (1935, c. 52, s. 10; 1943, c. 649, s. 3; 1975, c. 716, s. 5; 1979, c. 667, s. 41.)

CASE NOTES

Quoted in Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

§ 20-16. Authority of Division to suspend license.

(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) to (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has

r after that date, rewrote subsection

a license issued by the Divi-
).00) and giving the Division
llowing has occurred:
n lost or destroyed.
name or address on the li-

entitled to a license with a
background.
son's license, the revocation
period for which the license
935, c. 52, s. 9; 1943, c. 649, s.
716, s. 5; 1979, c. 667, s. 41;
43, s. 3; 1991, c. 682, s. 2; c.
., 1992), c. 1007, s. 28.)

:. Sess., 1992) amendment, effective
21, 1992, rewrote this section.

:S

n to cancel license.

it ancel any driver's li-
ns as not entitled to the
id licensee failed to give the
:s application, or committed

ensee must surrender the l
:5, c. 52, s. 10; 1943, c. 649, s.
41.)

:S

n to suspend license.

ty to suspend the license o
nary hearing upon a showin
vidence that the licensee
aws 1979, c. 36;
ubsection (c) of this section
cumulated 12 or more point
e three-year period immed
nent of a license which h

been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially equivalent to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's license shall be suspended by the Division of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions

of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	4
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	2
	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of alcoholic beverages
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that

previously have been
be cancelled.
Whenever any licensee accu
mulates as many as four
mediately following reinstat
pension or revocation, the D
end a conference regarding
vision may also afford any
ny as seven points or any lic
four points within a three-
nstatement of his license aft
an opportunity to attend a
the Division and, upon the
ken at the clinic, three poi
nsee's conviction record; pr
nts shall be made on behal
riod.
When a license is suspended
rein, the first such suspensio
second such suspension sh
bsequent suspension shall r
Whenever the driver's licens
m under this subsection and
spension or revocation unde
nsions or revocation shall
In the discretion o Div
ceed one year may b stitu
ired period of suspension unde
this section. Any violation
eriod shall result in a susper
the suspension period. Any a
nder this subsection during a
iolation of the condition of p
(d) Upon suspending the lic
this section, the Division sha
riting and upon his request
hearing, unless a preliminary
was suspended, as early as pr
after receipt of such request. T
district court district as define
resides. Hearings shall be ro
that district if the district cont
Division and the licensee agre
some other district, and such
this section printed thereon. U
agents of the Division may
poenas for the attendance of
vant books and papers and
licensee. Upon such hearing
order of suspension, or good c
the suspension of such license
preliminary or otherwise, i
(a)(10a) of this section, the D
in its discretion substitute a
year for the suspension or fo
Probation shall mean

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 27, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: Brenda J. Carter, Committee Counsel

RE: **SENATE BILL 148 - MOTOR VEHICLE OCCUPANT RESTRAINTS**
Proposed Committee Substitute
Senator Winner

Senate Bill 148 would make various changes to the laws pertaining to seat belts and safety seats. The bill would become effective July 1, 1998.

Mandatory Seat Belt Use.

Section 1 of the bill amends G.S. 20-135.2A (Seat belt use mandatory) to require **all** occupants age 16 or older of a passenger motor vehicle to wear seat belts. Under current law, passengers age 16 or older are required to wear seat belts only if they are in the front seat. Section 1 also deletes the provisions regarding passengers between the ages of 12 and 16; all passengers under 16 will now be covered by G.S. 20-137.1 (Child restraint systems required).

Section 2 of the bill increases the penalty for a violation of the mandatory seat belt law from $25 to $50, and makes other clarifying changes. This penalty will apply to the driver if the driver is not wearing a seat belt. It will also apply to any passenger over the age of 16 who is not wearing a seat belt.

Section 3 provides that a driver who is not wearing a seat belt can be assigned drivers license points for the violation. Treating the seat belt violation as a moving violation for purposes of G.S.20-16(c) means that the driver will be assigned 2 points against his driving record. A passenger who is not wearing a seat belt will not be assigned points, nor will the driver be assigned points for the failure of a passenger 16 or over to buckle up.

Section 4 repeals an obselete provision that required a report on the effectiveness of the mandatory seat belt law by October 1, 1988.

Transporting a child under 12 in the open cargo area of a pick-up

Section 5 amends the law regarding transporting a child under 12 in the open cargo area of a pick-up. It repeals the exception for counties that have no incorporated area with a population over 3,500. Section 6 increases the penalty for a violation from $25 to $50, and makes other clarifying changes. Section 7 provides that drivers license points will be assigned for violations. Since the driver has the responsibility to comply with the law, the drivers license points and the penalty are against the driver. Section 8 repeals an evaluation and reporting requirement on the effectiveness of this law.

Child Restraint Systems

Section 9 amends G.S. 20-137.1 to require that all children who are between the ages of 5 and 16 years old or weigh 60 pounds or more must wear a seat belt. Children who are under five and weigh less than 60 pounds must be in an approved safety seat. Section 10 requires that drivers license points be assigned against the driver for a violation of the requirement.

Upgrading North Carolina's Occupant Restraint Laws

❑ Occupant Restraint Laws Save Lives

North Carolina's seat belt and child passenger safety laws have been saving lives and preventing injuries for many years. According to the Highway Safety Research Center, seat belts have saved more than 1,700 lives in North Carolina since October, 1985, when the belt law went into effect. In an effort to further increase the savings in lives, injuries and money, the Governor's Highway Safety Commission and the NC Child Fatality Task Force are proposing that North Carolina strengthen its occupant restraint laws.

❑ What's Being Proposed?

Seat Belt Law

- ♦ Assess 2 driver license points
- ♦ Increase fine to $50
- ♦ Cover all seating positions, all ages, and all vehicles

Child Restraint Law

- ♦ Assess 2 driver license points

Pick-up Truck Open Cargo Bed

- ♦ Assess 2 driver license points
- ♦ Provide statewide coverage, eliminating exclusion of certain counties

❑ Why Are Tougher Laws Needed?

- ♦ Increasing seat belt use from 80% to 90% should lead to an estimated 79 lives saved and 784 serious injuries prevented per year in NC.
- ♦ Increasing rear seat belt use from 50% to 80% should lead to an estimated 4 lives saved and 32 serious injuries prevented per year.
- ♦ Belt *nonusers* in NC are more often involved in high risk behaviors such as drinking and driving, are less likely to have health care coverage, and are up to 35% more likely to be involved in crashes.
- ♦ Increasing seat belt use from 80% to 90% should lead to an additional cost savings, including lost productivity, of $65,500,000 for fatalities and $33,923,000 for serious injuries per year in NC.

WHY DRIVER LICENSE POINTS?

Points Work

Target group (males and younger ages) already have poor driver records. They are concerned they will lose their license if they receive additional driver license points. A license is suspended by the Division of Motor Vehicles when 12 or more points have been accumulated.

Points Change Behavior

Research surveys of both nonusers and people actually receiving seat belt tickets show driver license points as the #1 method of getting them to wear seat belts every time they drive.

Lives Saved

Increasing seat belt use from 80% to 90% would save an estimated 79 lives and prevent 784 serious injuries each year in North Carolina.

Money Saved

Increasing seat belt use from 80% to 90% would lead to a direct medical and emergency cost savings of $1.4 million for fatalities and more than $15 million for serious injuries.

New Strategy Needed

With "Click It or Ticket," seat belt use has leveled off at 83%. Driver license points are critical to get the remaining 20% to buckle up.

Seat Belt Nonuser Profile

- Up to 35% more likely to be involved in crashes.
- More than 40% more likely to have convictions for driving violations, especially speeding.
- More likely to have an arrest record.
- Less likely to have health care coverage
- More likely to drink heavily.

Source: University of North Carolina Highway Safety Research Center

ESTIMATED BENEFITS FROM PROPOSED NC SAFETY BELT LAW MODIFICATIONS

Potential Benefits for Assigning Driver License Points

- In Canada, demerit points have been successfully used for belt violations for a number of years. Five of the twelve Canadian Provinces have assigned demerit points for belt violations, three of which have exceeded 90 percent belt use.
- Belt nonusers in NC are more often involved in high risk behaviors such as drinking and driving, are less likely to have health care coverage, and are up to 35% more likely to be involved in crashes. Because of their high risk lifestyle and higher crash involvement, increases among this population should result in even greater reductions in deaths, injuries and societal costs than did previous increases in belt use.
- Surveys of NC belt nonusers indicate that they would be likely to respond to the assignment of demerit points and the increased risk of license suspension.
- Increasing seat belt use from 80% to 90% should lead to an estimated 79 lives and 784 serious injuries prevented per year in NC.
- Increasing seat belt use from 80% to 90% should lead to an additional cost savings for direct medical and emergency services costs of $1,338,000 for fatalities and $15,290,000 for serious injuries.
- One provision of the Graduated Driver's Licensing legislation requires seat belt use for all vehicle occupants. Assigning driver license points will enhance the Division of Motor Vehicles' ability to track GDL violations.

Potential Benefits for Increased Coverage

- The majority of North Carolina motor vehicle crash victims are covered by either the Child Passenger Safety or Seat Belt law. Non-covered occupants are primarily rear-seat occupants not covered by the Child Passenger Safety law and thus not required to be restrained.
- Seat belt nonuse in the rear seat is offset somewhat by the fact that the rear seat tends to be safer in crashes than front seats.
- Based on a conservative lap belt effectiveness estimate of 25%, increasing rear seat belt use from 50% to 80% should lead to an estimated 4 lives and 32 serious injuries prevented per year. The National Highway Traffic Safety Administration estimates that rear-seat lap and shoulder belt combinations are at least 60% effective in reducing fatalities. Increased use of rear-seat lap shoulder belts should increase the benefits that may expected from increased coverage.
- Increasing rear seat belt use from the current estimate of 50% to 80% should lead to an estimated cost savings for direct medical and emergency services costs of $68,000 for fatalities and $624,000 for serious injuries.

Potential Benefits for Increased Fines

- Potential benefits of increasing the fine for violations are less definitive, but increases in the fines for violations would be consistent with recommendations of the National Highway Traffic Safety Administration. A 1995 NHTSA study of the effect of various provisions of safety belt use laws found that for each $1 in fine level states tend to realize about 0.08 percent higher belt use.

POTENTIAL BENEFITS OF DRIVER LICENSE POINTS FOR SEAT BELT LAW VIOLATIONS

- **Assessment of driver license points has been shown to work.** In Canada, demerit points have been successfully used for belt violation for a number of years. Five of the twelve Canadian Provinces have assigned demerit points for belt violations, three of which have exceeded 90 percent belt use.

- **A new strategy is needed to increase belt use.** With "Click It or Ticket", belt use has leveled off at around 80% as it did in Canada.

- **It is critical to encourage the last 20% to buckle up.** Studies in North Carolina have shown that belt nonusers are

  - Up to 35% more likely to be involved in crashes.

  - Over 40% more likely to have convictions for driving violations (especially speeding).

  - Less likely to have health coverage.

  - More likely to acknowledge having consumed large amounts of alcohol in the past year.

  - More likely to have and arrest record.

- **The primary target groups** (males and younger ages) already have poorer driving records and concern of license suspension from receiving additional driver license points.

- **Multiple surveys** of both nonusers and persons actually receiving seat belt tickets rate driver license points as the #1 method of getting them to wear seat belts every time they drive.

- **Potential for injury/fatality reduction.** Increasing seat belt use from 80% to 90% should lead to an estimated 79 lives and 784 serious injuries prevented per year in North Carolina.

- **Cost savings.** Increasing seat belt use from 80% to 90% should lead to direct medical and emergency cost savings of $1.4 million for fatalities and over $15 million for serious injuries.

- **Enhancement of Graduated Driver's Licensing legislation.** One provision of the GDL requires seat belt use for all vehicle occupants. Assigning driver license points will enhance the Division of Motor Vehicles' ability to track GDL violations.

Potential Benefits for Increased Coverage

- Since the first child passenger safety law went into effect in North Carolina in 1982, restraint use for children has increased dramatically from 20% to over 90% for children less than age two and from less than 10% to 65% for children ages 2-5. Restraint use rates for children ages 6-15, covered only in the front seat until 1995, are estimated to be in the 50%-60% range.

- The fatal and serious injury rate for the children less than age two has been reduced from 1.70% prior to 1982 to 0.28% during the last six months of 1995. As age increases, and use rates decline, injury rates also increase. During this same time period in 1995, the fatal and serious injury rate for 2-5 year-olds was 0.64%, for 6-11 year-olds it was 0.76% and for 12-15 year-olds it was 1.29%.

- Restraint use for older children tends to be higher when they are covered by occupant restraint laws. Extending the age range for children covered in the rear seat as well as the front should lead to a greater number of children being protected with injury reductions.

Potential Benefits for Assigning Driver License Points

- Available data suggests that unrestrained children tend to be in vehicles driven by less safe drivers. High risk drivers indicate through surveys that possible assignment of driver license points would increase their compliance with the seat belt law. By extension, assignment of points for child passenger safety violations should lead to increased compliance with this law as well.

Potential Benefits for Age and Weight Requirements for Child Restraint Device Use

- The North Carolina Child Passenger Safety law currently allows children to wear a seat belt at age four.

- Convertible child safety seats are 60% - 70% effective in preventing fatal and serious injuries. Lap shoulder belts are 40% - 50% effective and lap only belts are 25% effective. Switching children from safety seats to seat belts reduces the amount of protection they are provided in crashes, especially since most seat belts do not fit small children well. Good fit of a seat belt is essential for protection.

- The 90th percentile 4-year-old male child weighs 42 pounds, just over the limit for convertible child safety seats. Most children still fit in safety seats at age four.

- In extreme cases, children less than age four weigh over fifty pounds and are still too large for the booster seats designed to accommodate children up to the 50 - 60 pound range. Children who outgrow both the convertible and booster seats before the age of four can legally be restrained only in specialized restraints that require special installation.

- Including a weight at which children can be moved to a seat belt, such as 50 or 60 pounds, as well as age requirements would encourage more parents to keep their children in convertible or booster seats longer but would allow for large younger children to be switched to a legal substitute.

POTENTIAL BENEFITS FROM PROPOSED NC BACK OF PICKUP TRUCK LAW MODIFICATIONS

According to information obtained from the 1994 League of Municipalities Directory, the following 32 counties would be exempt from the law based on the absence of incorporated areas with populations exceeding 3,500:

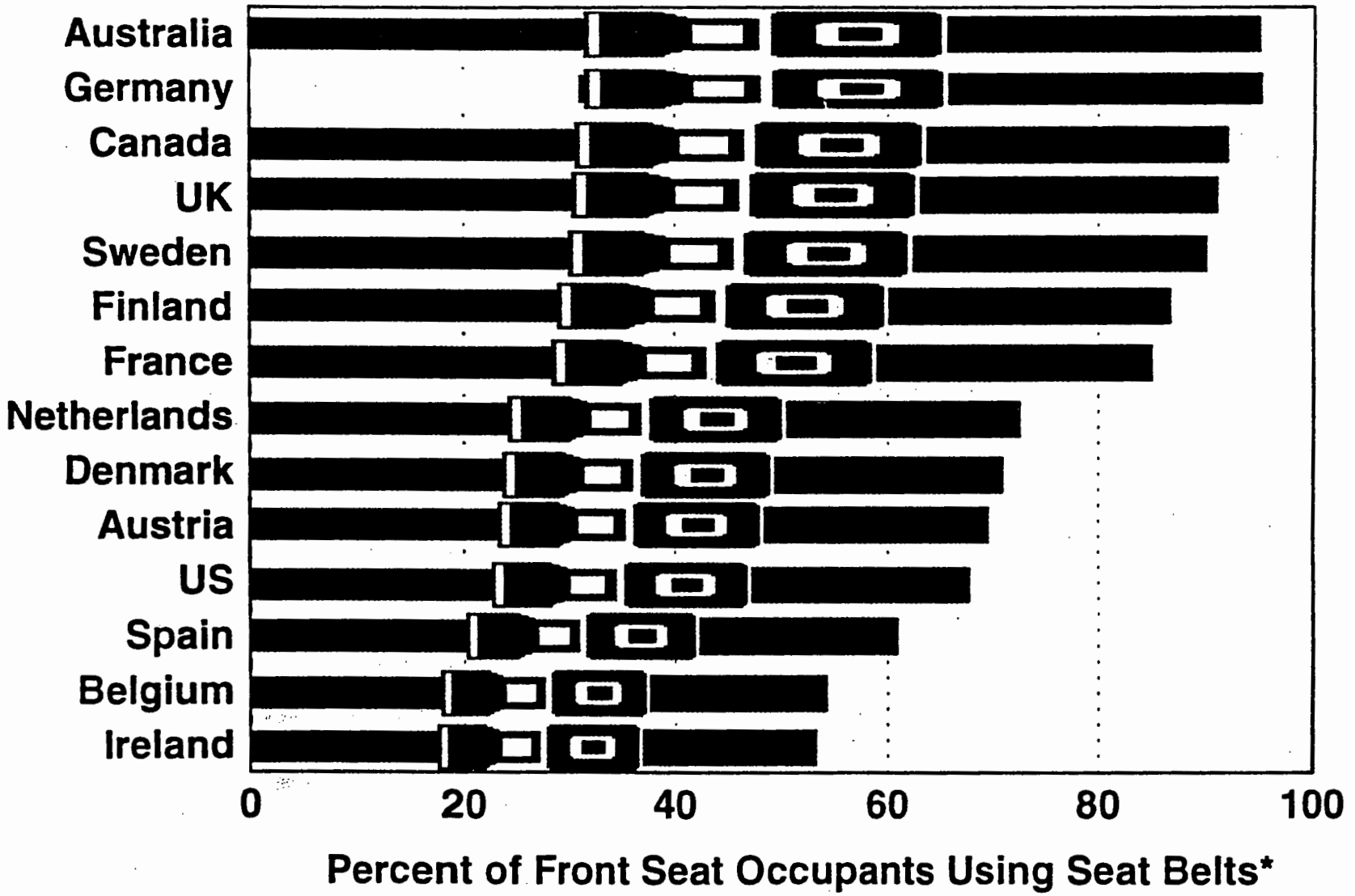
Alexander, Alleghany, Ashe, Avery, Bertie, Camden, Caswell, Cherokee, Clay, Currituck, Duplin, Franklin, Gates, Graham, Green, Hyde, Jackson, Jones, Macon, Madison, Mitchell, Montgomery, Northhampton, Pamlico, Pender, Perquimans, Polk, Swain, Tyrrell, Warren, Yadkin, Yancey.

These counties are designated as "Exempt" in the following table:

Injury Experience of Children <16 in North Carolina Crashes by Vehicle Type						
Year(s)	Vehicle Type	Pickup Truck Law Status	Total Involved	Average per County Involved	#a+K Injured	%a+K
93-94	Pickup	Covered	6,139	90	113	1.84
	Pickup	Exempt	670	21	12	1.79
	Others	Covered	112,129	1649	1,240	1.10
	Others	Exempt	6,185	193	155	2.50
95	Pickup	Covered	4,071	60	45	1.11
	Pickup	Exempt	402	13	8	1.99
	Others	Covered	64,532	949	517	0.80
	Others	Exempt	3,469	108	57	1.64

- The number of children involved in crashes in both pickup truck and other types of vehicles is much smaller in the rural exempt counties as a whole and on a per county average.
- In almost all cases, the percent of children killed or seriously injured in pickup trucks is greater than for other types of vehicles.
- In almost all cases, the percent of children killed or seriously injured in exempt counties is greater than for counties covered under the pickup truck law.
- Injury experience of children in the exempt counties provides no basis for continuation of this exemption.

Seat Belt Use around the World



*Drivers only for Belgium, Canada, Denmark and Spain

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 25, 1997

MEMORANDUM

TO: Senator Roy Cooper, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 39 - Modify Setoff Debt Collection -** Senator Larry Shaw

Senate Bill 39 amends the Setoff Debt Collection Act by adding provisions to extend the applicability of the law to debts owed to local governments in addition to debts owed to the State.

This bill amends Chapter 105A by making the provisions of current law which allows the Department of Revenue to withhold refunds owned to taxpayer, to be applied to certain debts owed to state agencies, applicable to cities and counties.

This bill adds special provisions for local governments to assert their claims to Revenue by requiring that the local governments act through a central clearinghouse, the League of Municipalities, or the Association of County Commissioners. The local debt owed by the taxpayer and the amount of the tax refund owned to the taxpayer must be at least $50. The bill provides for notice to be given to the debtor before the money is given to the local government. The debtor has a right to a hearing and an appeals process for disputed claims.

Under the law the Department of Revenue has the highest priority for funds to be claimed. The State has priority over claims of local governments. Multiple claims at any level are given priority based on the time the claim was presented to Revenue, or the submitting organization for local governments.

The provisions of the bill authorizing a single clearinghouse, establishing the local notice and hearing procedures, and granting Revenue authority to adopt rules to implement this act are effective when they become law. All other provisions of the bill become effective January 1, 1998.

S39-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 39

Short Title: Modify Setoff Debt Collection. (Public)

Sponsors: Senators Shaw of Cumberland, Cochrane, Cooper, Kerr, Soles; and Weinstein.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105A of the General Statutes reads as rewritten:

"Chapter 105A.

"Setoff Debt Collection Act.

~~"ARTICLE 1.~~

~~"In General.~~

"§ 105A-1. Purposes.

The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State through its various ~~claimant~~ agencies or to a local government and who qualify for refunds from the Department of Revenue. It is also the intent of this ~~Article~~ Chapter that procedures be established for setting off against any ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government. Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible.

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. -- A State agency or a local agency acting through a clearinghouse or organization pursuant to G.S. 105A-3(b1).

(2) Debt. -- A liquidated sum due and owing a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum. The term includes sums collectible pursuant to Title IV, Part D of the Social Security Act.

(3) Debtor. -- An individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(4) Department. -- The Department of Revenue.

(5) Reserved.

(6) Local agency. -- A county or municipality to the extent it is not a State agency as defined in this section.

(7) Net proceeds collected. -- Gross proceeds collected through setoff against a debtor's refund minus any collection assistance fee charged by the Department.

(8) Refund. -- An individual's North Carolina income tax refund.

(9) State agency. -- Any of the following:

a. 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.

b. 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.

c. 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.

d. The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families

with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error.

e. The Office of the North Carolina Attorney General on behalf of any State agency when the debt has been reduced to a judgment.

f. Any other unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina.

~~As used in this Article:~~

~~(1) "Claimant agency" means and includes:~~

~~a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;~~

~~b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;~~

~~c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;~~

~~d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;~~

~~e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);~~

~~f. The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;~~

~~g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;~~

~~h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;~~

~~i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;~~

~~j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122C; and these same institutions by any other names by which they may be known in the future;~~

~~k. The North Carolina Department of Revenue;~~

~~l. The Administrative Office of the Courts;~~

~~m. The Division of Forest Resources of the Department of Environment, Health, and Natural Resources;~~

~~n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;~~

~~o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1;~~

~~p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes;~~

~~q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2;~~

~~r. The North Carolina Department of Human Resources when in the performance of its collection duties for intentional program violations and violations due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program collection functions.~~

~~The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error;~~

~~s. The Employment Security Commission of North Carolina.~~

~~t. Any State agency in the collection of salary overpayments from former employees.~~

~~u. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the program under which the State encourages participation in the National Board for Professional Teaching Standards (NBPTS) Program, enabled by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~

~~(2) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.~~

~~(3) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.~~

~~(4) "Department" means the North Carolina Department of Revenue.~~

~~(5) "Refund" means any individual's North Carolina income tax refund.~~

~~(6) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund minus any collection assistance fee charged by the Department.~~

"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining identifying ~~information.~~ information; registration.

(a) Remedy Additional. -- The collection remedy under this ~~Article~~ Chapter is in addition to and not in substitution for any other remedy available by law.

(b) Mandatory State Usage. -- All ~~claimant~~ State agencies shall submit, for collection under the procedure established by this ~~Article,~~ Chapter, all debts ~~which~~ they are owed, except debts that they are advised by the Attorney General not to submit because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds. Except in the case of a State agency described in G.S. 105A-2(9)a. through d., the State Controller may waive this requirement in situations when an agency's submission of the debts would not be practical or would not be effective.

(b1) Optional Local Usage. -- After complying with the notice and hearing requirements of G.S. 105A-5, a local agency may submit for collection under the procedure established in this Chapter all debts it is owed, other than debts the validity of which is in dispute. Local agencies shall submit debts for collection pursuant to this Chapter only through one of the following:

(1) A clearinghouse established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes, pursuant to which the clearinghouse will submit debts on behalf of any requesting local agency.

(2) The North Carolina League of Municipalities.

(3) The North Carolina Association of County Commissioners.

(c) Identifying Information. -- All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by ~~rules promulgated by~~ the Department ~~pursuant to G.S. 105A-16~~ from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this ~~Article.~~ Chapter.

(d) Registration; Reports. -- A ~~claimant~~ State agency must register with the Department and with the State Controller. Every State agency must report annually to the ~~Department~~ State Controller the amount of debts owed to the agency for which the agency did not submit a claim for setoff and the reason for not submitting the claim.

A clearinghouse or organization that submits debts on behalf of a local agency must register by filing written notice with the Department of its intention to effect collection through setoff. If a clearinghouse registers to submit debts pursuant to this subsection, no other clearinghouse may register to submit debts pursuant to this subsection.

"§ 105A-4. Minimum sum collectible.

~~A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this Article~~ The Department shall not collect a debt pursuant to this Chapter unless both the debt and the refund, if any, are at least fifty dollars ($50.00).

"**§ 105A-5. Local agency notice, hearing, and determination.**

(a) Prerequisite. -- A local agency may not submit a debt to the Department pursuant to G.S. 105A-6 until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. -- A local agency shall send written notice to the debtor that the agency intends to submit the debt for collection by setoff. The notice shall clearly set forth the basis for the agency's claim to the debt, the intention to apply the debtor's tax refund against the debt, the debtor's opportunity to give written notice of intent to contest the validity of the claim within 30 days after the date the notice was mailed, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period is a waiver of the opportunity to contest the claim, causing potential setoff by default. The written application by the debtor for a hearing becomes effective upon mailing the application postage prepaid and properly addressed.

(c) Hearing. -- A hearing on a contested claim of a local agency shall be held first before the governing body of the local agency or the governing body's designee. No issues may be considered at the hearing that have been previously litigated. If the debtor disagrees with the determination of the governing body or its designee, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the determination of the governing body or its designee. Notwithstanding the provisions of G.S. 150B-2, a local agency is an agency for purposes of contested cases and appeals under this Chapter.

(d) Determination. -- It shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made. The debtor may appeal the determination as provided in G.S. 105A-9.

~~**Collection of sums due claimant agencies through setoff.**~~

~~Subject to the limitations contained in this Article, the Department of Revenue shall upon request render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds due the debtor from the Department by the sum certified by claimant agency as due and owing.~~

"**§ 105A-6. Procedure for setoff.**

(a) Notice to Department. -- A claimant agency seeking to attempt collection of a debt through setoff shall notify the Department in writing and supply ~~(i)~~ information necessary to identify the debtor whose refund is sought to be set ~~off and (ii)~~ off. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. ~~Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the first year preceding the calendar year during which the refund would be paid. The notice~~

~~is effective to initiate setoff against refunds that would be made in calendar years following the year in which the notice was first made until the date specified in the notice that the debt is expected to expire.~~ The agency shall notify the Department in writing when a debt has been paid or is no longer owed the agency.

(b) Setoff by Department. -- The Department, upon receipt of notification, shall determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars ($50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department shall ~~notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

~~(c) Unless stayed by court order, the Department shall, upon certification as provided in this Article,~~ set off the ~~certified~~ debt against the refund to which the debtor would otherwise be ~~entitled.~~ entitled and shall refund any remaining balance to the debtor as if setoff had not occurred. The Department shall mail the debtor written notice that setoff has occurred. Upon effecting setoffs, the Department shall periodically credit claimant agencies with the net proceeds collected on their behalf.

(c) Refund if Setoff Exceeds Debt. -- If the net proceeds credited to a claimant agency exceed the amount of the debtor's debt, the agency shall refund the balance to the debtor. The refund shall bear interest as provided in G.S. 105A-8(b).

(d) State Agency Notice to Debtor. -- A State agency shall credit to a nonreverting trust account all refund setoffs credited to it. Within 10 days after receipt of a refund setoff from the Department, the State agency shall send written notification to the debtor that the refund has been received. The notice shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim within 30 days after the date the notice was mailed, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period is a waiver of the opportunity to contest the claim, causing final setoff by default. The written application by the debtor for a hearing becomes effective upon mailing the application postage prepaid and properly addressed.

If a State agency fails to provide timely notice in accordance with the requirements of this subsection, the State agency shall refund to the debtor the entire amount set off plus the collection assistance fee retained by the Department. That portion of the refund reflecting the collection assistance fee must be paid from the State agency's funds. The refund shall bear interest as provided in G.S. 105A-8(b).

~~**"§ 105A-7. Notification of intention to set off and right to hearing.**~~

~~(a) The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of same to the Department of its assertion of rights to the refund or any part thereof. Such notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to G.S.~~

~~105A-10, the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within 15 days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.~~

~~(b) The contents of the written notification to the debtor (and the Department's copy) of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim within 30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.~~

~~(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.~~

"**§ 105A-8. ~~Hearing procedure.~~ State agency hearing and determination.**

(a) Hearing. -- A hearing on a contested ~~claim,~~ claim of a State agency, other than a claim of a constituent institution of The University of North Carolina, or a claim of the Employment Security Commission of North Carolina, shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina shall be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission of North Carolina shall be conducted in accordance with regulations adopted by the Employment Security Commission of North Carolina. No issues may be considered at the hearing that have been previously litigated.

(b) Determination; Refund. -- ~~Additionally, it~~ It shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made. If it is determined that the amount set off is excessive, the State agency shall refund the excess amount to the taxpayer. If it is determined that the State agency is not entitled to any part of the amount set off, the State agency shall refund the entire amount set off plus the collection assistance fee retained by the Department. That portion of the refund reflecting the collection assistance fee must be paid from the State agency's funds. If a refund is made to the taxpayer, the State agency shall pay interest to the taxpayer calculated as provided in G.S. 105-241.1(i) from the date one day after the date through which the Department pays interest on the refund or the date that interest begins to accrue, as provided in G.S. 105-266(b), whichever is later.

~~(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this Article.~~

~~(c) No issues may be considered at the hearing which have been previously litigated.~~

"**§ 105A-9. Appeals from hearings.**

Appeals from action taken at hearings allowed under this ~~Article~~ Chapter shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from actions allowed under this ~~Article~~ Chapter conducted by the Employment Security Commission of North Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

~~"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.~~

~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with G.S. 105A-7 mandating timely request for review of the asserted basis for setoff, the claimant agency shall within 20 days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for setoff.~~

~~(b) Upon receipt by the Department of a certified debt from the claimant agency, the Department shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of G.S. 105A-14 and by refunding any remaining balance to the debtor as if setoff had not occurred.~~

~~"§ 105A-11. Notice of final setoff.~~

~~Upon the finalization of setoff under the provisions of this Article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.~~

"§ 105A-12. Priorities in claims to setoff.

~~Priority in multiple claims to refunds allowed to be set off under the provisions of this Article shall be in the order in time which a claimant agency has filed a written notice with the Department of its intention to effect collection through setoff under this Article. Notwithstanding the priority set forth above according to time of filing,~~ ~~the~~ The Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. State agencies have priority over local agencies for collection by setoff. When there are multiple claims by State agencies other than the Department, the priority shall be in the order in time in which each agency registered for setoff pursuant to G.S. 105A-3. When there are multiple claims by organizations submitting debts on behalf of local agencies, the priority shall be in the order in time in which each organization registered for setoff pursuant to G.S. 105A-3. When there are multiple claims among local agencies whose debts are submitted by a single organization, the priority shall be in the order in time in which each local agency requested the organization to submit debts on its behalf.

"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.

~~(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.~~

~~(b) Each year the Department shall determine its actual cost of collection under the Setoff Debt Collection Act for the immediately preceding year and shall calculate~~

~~the percentage that cost represents of the preceding year's collections, excluding collections of child support arrearages under G.S. 105A-2(1)d.~~ To recover its cost of collection under this Chapter, the ~~The~~ Department shall ~~retain that percentage from the gross proceeds collected by the Department through setoff for the current year, other than the gross proceeds collected of child support arrearages under G.S. 105A-2(1)d.~~ add a collection assistance fee to each debt collected through setoff, collect it as part of the debt, and retain it. The collection assistance fee shall be determined based on the Department's actual cost of collection under this Chapter for the immediately preceding year and shall not exceed fifteen dollars ($15.00). If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. The Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collection of child support debts under this Chapter.

"**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

(a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected to a claimant agency, the Department shall provide the agency with an accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting shall, whenever possible, include the full names of the debtors, the debtors' social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected ~~charged~~ per setoff.

(b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final determination of the claim, and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the ~~gross~~ net proceeds collected.

"**§ 105A-15. Confidentiality exemption; nondisclosure.**

(a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, ~~all~~ the exchange of any information ~~exchanged~~ among the Department, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

(b) The information ~~obtained by~~ a claimant agency or an organization submitting debts on behalf of a local agency obtains from the Department in accordance with the exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency or organization only in the pursuit of its debt collection duties and ~~practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by G.S. 105-259, shall be penalized in accordance with the terms of that statute.~~ practices and may not be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

"**§ 105A-16. ~~Rules and regulations.~~ Rules.**

The Secretary of Revenue ~~is authorized to prescribe forms and make all rules which he deems necessary in order to effectuate the intent of this Article.~~ may adopt rules to implement this Chapter."

Section 2. G.S. 105-266(b) reads as rewritten:

"(b) Interest. -- An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is ~~mailed.~~ mailed or, in the case of a refund set off against a debt pursuant to Chapter 105A of the General Statutes, five days after the Secretary's notice of setoff is mailed.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.
(2) The date the final return was due to be filed.
(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

Section 3. The changes to G.S. 105A-3(d), 105A-5, and 105A-16 made by this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY COMMITTEE REPORT
Sen. Roy A. Cooper, III, Chairman

Thursday, March 27, 1997

SENATOR COOPER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **39** An Act to Revise the Setoff Debt Collection Act
Sequential Referral: None
Recommended Referral: Finance

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

MINUTES
SENATE JUDICIARY COMMITTEE
APRIL 1, 1997

The Senate Judiciary Committee met on Tuesday, April 1, 1997 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present:

Senator Cooper called the meeting to order and recognized Senator Odom to explain **Senate Bill 368** - AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

Senator Odom discussed the differences in the current law and the proposed changes which Senate Bill 368 reflects (see Attachment #1).

Lt. Governor Dennis Wicker was recognized to speak on the bill. He urged the Committee to support this legislation as a way to help remove the threat imposed on innocent people by habitual drunk drivers.

The following people were recognized to speak on the bill:

Gregory and Sherry Dail, parents of Megan Dail who was killed by a drunk driver with six previous DWI convictions.

Jan Cartledge, whose child was killed by a drunk driver eleven years ago.

Wes Williams, father of Morgan Williams. Mr. Williams and Morgan were involved in an accident with a drunk driver. Fortunately, neither was seriously injured.

Shelly Doyle, a Cary High School student, a member of SADD.

Joe Parker, with the Governor's Highway Safety Program.

Officer Eric Smith, Cary Police Department - Accident Investigations.

Trooper R. A. Benge, North Carolina Highway Patrol.

Trooper T. D. Frye, North Carolina Highway Patrol.

Senator Cooper informed the Committee that because of technical changes and other work that needs to be done on the bill, there would not be a vote taken at this meeting. He asked Committee members to submit any

amendments they might have to the Committee Counsel and the bill will be discussed at a future meeting.

There being no further business, the meeting was adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 368*

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors: Senators Odom, Cooper, Forrester (Cosponsors); Albertson, Allran, Ballance, Ballantine, Blust, Carpenter, Carrington, Cochrane, Conder, Dannelly, East, Foxx, Garwood, Gulley, Jenkins, Jordan, Kerr, Kincaid, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, McDaniel, Phillips, Plyler, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle

that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. --In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he ~~must~~ shall also determine if there are any security interests noted on the vehicle's certificate of title. The State ~~must~~ shall notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice ~~must~~ shall be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (c); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 shall determine if the vehicle is subject to forfeiture under this section. If the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited. If the defendant was not a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the registered owner of the vehicle establishes, by clear and convincing evidence, that he or she is an innocent party as defined by subsection (f) of this section, in which case the trial judge may order the vehicle released to the registered owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an innocent party lienholder pursuant to the provisions of subsection (h) of this section.

~~(c) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Registered Owner. -- If the registered owner establishes, by clear and convincing evidence, that the vehicle was being driven by a person who was not a registered owner at the time of the underlying offense and that each registered owner is an 'innocent party', the sentencing judge may order the vehicle returned to the registered owner.

This release may only be ordered upon satisfactory proof of:

(1) The identity of the person as a registered owner;

(2) The existence of financial responsibility as required by Article 13 of this Chapter;

(3) The payment of towing and storage fees; and

(4) The execution of an acknowledgment as set forth in this section.

No vehicle subject to forfeiture under this section shall be released to a registered owner if the records of the Division indicate any registered owner had previously signed an acknowledgment as required by this section, and the same person was operating the owner's vehicle when that person's license was revoked.

(f) Innocent Party Defined. -- A registered owner or holder of a security is an 'innocent party' if he or she:

(1) Did not know and had no reason to know that the defendant's drivers license was revoked; or

(2) Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without his or her consent.

(g) Acknowledgment Required. -- The 'innocent party' registered owner of a vehicle seeking release pursuant to this section shall sign a written document acknowledging that:

(1) His or her vehicle was operated by a person charged with an offense involving impaired driving while that drivers license was revoked as a result of a prior impaired drivers license revocation;

(2) If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, that the vehicle is subject to impoundment and forfeiture, even if the operator was not impaired; and

(3) A lack of knowledge or consent to the operation will not be a defense in the future.

(h) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines by clear and convincing evidence, that the holder of the security interest is an 'innocent party', as defined in subsection (f) of this section, and:

(1) The lienholder's interest is not less than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to a registered owner or any person acting on a registered owner's behalf; and

(3) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(i) Possessory Lien. -- The county school board shall be entitled to a possessory lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to the lien shall not exceed five dollars ($5.00) per day."

Section 1.2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 is subject to seizure if at the time of the violation the drivers license was suspended as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12) or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- In any case where the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. If the registered owner was not operating or present in the vehicle at the

time of the offense, the officer shall cause to be issued written notification of impoundment to the registered owner of the vehicle. This notice shall be sent by first-class mail to the most recent address contained in the Division registration records. This written notification shall inform the registered owner that the vehicle has been impounded, the reason for the impoundment, and the procedure for requesting its release. Whether the registered owner was driving or present at the time of seizure, the seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. The officer shall also cause notice to be given to any lien holder of record with the Division of the impoundment and intent to forfeit the vehicle upon conviction.

(c) Review by Magistrate. -- Upon seizing the vehicle, the seizing officer shall present to the magistrate determining the operator's condition for pretrial release an affidavit of impoundment setting forth the requirements of this section. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held in accordance with this section. The magistrate may request additional information and may hear from the operator if he is present. If the operator of the vehicle is not present at the time the affidavit of impoundment is presented, the seizing officer may present the affidavit to any judicial official who shall perform the review contained herein.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board or, in the alternative, may contract with a commercial storage facility for the storage of such vehicles. In either event, a storage fee of not more than five dollars ($5.00) per day may be charged for the storage of any vehicle while in the constructive possession of the school board.

(e) Release of Vehicle Pending Trial. -- A registered owner of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the Clerk of Superior Court in the county where the charges are pending for pretrial release of the vehicle. The Clerk may release the vehicle to the registered owner under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount double the value of the seized vehicle, payable to the county school fund and conditioned on return of the vehicle, without the imposition of any additional liens or encumbrances, on the day of trial of the operator;

(4) Execution of a written acknowledgment as described in G.S. 20-28.2(g); and

(5) A check of the records of the Division indicates that the owner has not previously executed a written acknowledgment pertaining to the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The county school board shall be entitled to a possessory lien for any and all costs and fees associated with the towing, storage, (not to exceed five dollars ($5.00) per day), and sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests."

Section 1.3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by trial judge.**

(a) Release to Innocent Registered Owner. -- An innocent party registered owner may apply to the trial judge presiding over the underlying offense for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The innocent party registered owner of a vehicle seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also acknowledge that if the vehicle is again operated by this particular person at any time while the person's license is revoked, the owner's vehicle is subject to seizure, impoundment, and forfeiture, even if the person is not impaired at the time he or she operates the vehicle. The registered owner shall acknowledge further that a lack of knowledge, or consent to the operation will not be a defense in the future.

(c) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines, by clear and convincing evidence, that the holder of the security interest is an 'innocent party' as defined by G.S. 20-28.2(f), and the lienholder satisfies the criteria as set out in G.S. 20-28.2(h)."

Section 1.4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless the trial judge orders the vehicle returned to an innocent party pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be at public sale and shall be conducted by the county school board or a person acting on its behalf. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. If the vehicle was stored on property owned or leased by the county school board, the storage lien (not to exceed five dollars ($5.00) per day) shall be paid to the school fund of that county. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance, shall be paid to the

county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board. If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share of the school boards in the same manner as fines and other forfeitures."

Section 1.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least ~~14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is ~~imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ imposed. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
    a. The test reveals an alcohol concentration of 0.08 or more; or
    b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or

authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.2 is amended by adding a new subsection to read:

"(j) A person whose license is administratively revoked for 30 days under subsections (a) and (i) of this section may apply for a limited driving privilege after the expiration of 10 days provided that the applicant:

(1) At the time of the alleged offense, held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge for an offense involving impaired driving; and

(3) Obtains a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five

working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.2(j)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(e)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body 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~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical

analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(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 or the presence or absence of an impairing substance 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~~ blood, breath, or other bodily fluid or substance 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 that he held on the date he 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~~ 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 may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. HABITUAL IMPAIRED DRIVING.

Section 7. G.S. 20-138.5(b) reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a Class G ~~felon.~~ felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended and if paroled, the person shall be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation

Training (DART) or similar substance abuse program as a condition of parole. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VII. EFFECTIVE DATES.

Section 8. Sections 1.1 thorough 1.5, 6, and 8 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997, and apply to offenses committed on or after that date. If Part II, VI, or any other Part or section of this act requires additional funds for implementation, then it shall not become effective until those funds have been appropriated. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

Attachment #1

Summary of Senate Bill 368

PART I: SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED

When vehicle subject to forfeiture:

- **Current law and Senate Bill 368:** a vehicle is subject to forfeiture if the judge determines at sentencing that the defendant was driving with a revoked license, and that the revocation was an impaired driving revocation. The prosecutor is required to determine who owns the car and whether there are any security interests noted on the title. The State must then notify the holder of each security interest, and if the defendant is not the owner, notice must be served on the owner.

Determination of forfeiture:

- **Current law:** The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited.
- **Senate Bill 368:** The trial judge at the sentencing hearing on the operator's DWI charge will determine if the vehicle is subject to forfeiture.

Order of Forfeiture:

- **Current law:** The judge may order the forfeiture if he finds that the vehicle is not primarily used by a member of the defendant's family or household for business or for driving to and from work or school, that all potential innocent parties have been notified and no party has shown that he is an innocent party.
- **Senate Bill 368:** ***If the defendant was a registered owner of the vehicle, the judge shall order forfeiture.*** If defendant was not a registered owner, judge shall order forfeiture unless the registered owner establishes by clear and convincing evidence that he or she is an innocent party, in which case the trial judge may order the vehicle released to the registered owner under specified conditions.

Innocent Parties Defined:

- **Current law and Senate Bill 368:** Did not know and had no reason to know that defendant's license was revoked, or knew that defendant's license was revoked, but defendant drove vehicle without consent.

If Vehicle is Ordered Forfeited:

- **Current law:** Vehicle must be sold; proceeds of sale must be paid to school fund of county where property was seized.
- **Senate Bill 368:** Judge may authorize school board to sell at public sale or retain for its own use or judge may release vehicle to innocent party lienholder.

Other provisions of Senate Bill 368: Adds provisions requiring officer to seize and impound vehicle when offer has probable cause to believe veicle is subject to forfeiture.

Includes provisions regarding review of impoundment by magistrate, and conditions allowing release of vehicle pending trial.

PART II: INCREASED PENALTIES FOR DWI

Effective for offenses committed on or after December 1, 1997, the bill changes punishment for DWI conviction as follows.

(1) Level one punishment— the term of imprisonment may be suspended only if a condition of special probation requires the defendant to serve a minimum 30 days (now, 14 days) imprisonment.

(2) Level two punishment—the term of imprisonment may be suspended only if a condition of special probation is imposed, but the condition is not specified (now, a condition must be minimum seven days imprisonment or two days imprisonment and house arrest).

(3) Levels three, four, and five punishments—deletes the mandatory suspended sentence as punishment for each of these levels of punishment, thereby allowing active terms of imprisonment.

(4) For all levels of punishment, the bill provides that if probation is imposed, conditions of probation must include the defendant's obtaining substance abuse assessment and education or treatment as required by GS 20-17.6. Amends GS 20-179(k1) (credit for inpatient treatment) to allow the trial judge to order that costs of treatment be absorbed by the state.

PART III: INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Effective for offenses committed on or after December 1, 1997, the bill amends GS 20-16.2 (Implied consent to chemical analysis) and 20-16.5 (Civil license Revocation) to increase immediate pretrial license revocation for DWI offenses from 10 to 30 days, but allows limited driving privilege after 10 days if:

(1) at the time of the offense, person held either valid driver's license or a license that had been expired for less than one year;

(2) the person does not have an unresolved pending DWI offense; and

(3) the person obtains substance abuse assessment from a mental health facility and registers for, and agrees to participate in, recommended a training or treatment program.

PART IV. ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE DRIVING-AFTER-DRINKING OFFENSE BY PERSON UNDER 21.

Effective for offenses committed on or after December 1, 1997, the bill amends GS 20-138.3 (driving by person under 21 after consuming alcohol or drugs) to provide:

(1) results of an alcohol screening test or the refusal to submit to the test may be used by a law enforcement officer, court, or administrative agency to determine if alcohol was present in driver's body; and

(2) odor of alcoholic beverage on driver's breath is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body unless the driver was offered an alcohol screening test or chemical analysis and refused to provide a sample.

PART V. ALLOW DRUG TESTING FOR DWI

Effective for offenses committed on or after December 1, 1997, amends GS 20-139.1(Procedures governing chemical analysis) to provide that a person may be requested, under GS 20-16.2, to submit to chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the charging officer's discretion. A person's willful refusal to submit to the chemical analysis of blood or other bodily fluids or substances is willful refusal under GS 20-16.2. Makes conforming change in the definition of "chemical analysis" in GS 20-4.01(3a) to include a test for the presence of impairing substance as well as alcohol.

PART VI. HABITUAL IMPAIRED DRIVING

Effective for offenses committed on or after December 1, 1997, the bill amends GS 20-138.5(b) to require that a person convicted of habitual impaired driving must be sentenced to a minimum active term of not less than 12 months imprisonment, which may not be suspended. If paroled, person must be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or similar substance abuse program as a condition of parole.

Forfeiture provisions are effective when they become law.

Prepared by Brenda Carter, Committee Co-Counsel
Based in part on The Institute of Government's Daily Bulletin

Attachment #2

A & E Automax, Inc.

License 49660

Location:
6509-A Mt. Herman Rd.
Durham, NC 27703
Tel. (919) 596-5894

Mailing Address:
P.O. Box 90492
Raleigh, NC 27675
Fax: (919) 596-5894

March 31, 1997

Senator Roy Cooper
Legislative Building
Raleigh, NC 27603

Re: Senate Bill 368 (Governor's D.W.I. Initiative/A.B.)

Dear Senator:

I wish to express my sincere appreciation for all your efforts in sponsoring the above referenced bill. This bill addresses a subject that has brought untold, agonizing grief and crushing misfortune to countless American families. Mine was one of such families over thirty years ago and to this day the memories of a tragic occurrence which claimed the innocent life of a close family member still remain extremely difficult for me to address.

I am writing today not as an innocent victim of the underlying social cancer spreading daily throughout our country, but as a car dealer. I've recently been involved in a situation which could've easily resulted in one more agonizing and preventable occurrence. I sold a car to a habitual alcohol abuser. Before I could turn the paperwork into DMV, the car had been totaled and there were 12 empty beer cans and a crushed child restraint seat found in the car. The customer was a nanny! She was knocked into a coma and only by the will of God was no one killed. Her driver's license had been permanently revoked for repeated DWI convictions, there was no insurance coverage on the tag transferred to the recently purchased "cash sale" and the tag transferred had been earmarked by DMV Enforcement for collection due to lapsed insurance coverage, **but never collected**!

Due to inefficiencies in the tag verification procedures I was unable to verify insurance coverage. A driver's license number was provided for the title transfer application which was subsequently shown to be permanently revoked and the customer was able to put cash money down, attach a "wanted" tag to the vehicle and drive off to the beer store.

Three days later in my follow up to the paperwork when I saw the remains of the car I had just sold, all the horrible agonizing memories I had experienced as an eleven year old boy came surging back. I had become part of the problem which had crushed me as a child. Every moral fiber within me questioned what I had just done, and it was not illegal. Since that time, some 12 months ago, I have overcome most of the hurdles which prevented my verifying the insurance coverage on the transferred tag. Instead of relying on a telephone number operational only between 8 AM and 5 PM Monday - Friday, it appears the DMV will soon allow me to go online for instant access to the appropriate database. Never again will I sell a car to such a person and release them on society. I do not put my profit ahead of other's pain.

But there remains an avenue which allows such sociopaths to continue their random sprees of destruction and heartache. The issue of uncollected tags with expired insurance coverage allows these misguided people to continue driving anonymously until misfortune or other related aspects of their driving habits remove them from our highways.

In a recent discussion with Cpt. Stan Williams, Head of the internal affairs section of DMV, whose responsibilities include overseeing the processing of forms for tag collection, it was indicated that proper legislation requiring insurance companies to report to DMV the insurance coverage of newly insured vehicles in the similar manner that expired policies are reported would alleviate a large portion of the wasted time and resources expended by our DMV forces in following up on false claims of lapsed insurance. The inability of DMV to cross check expired policies against newly issued ones to the same driver creates a backlog of false expired insurance claims which bog down our process officers in the superfluous responsibilities of collecting fully insured tags.

Requiring insurance companies to report newly insured drivers would enable DMV to complete the cross checks which would prevent the backlog of "false claims" issued for uncollected tags.

Once the "fat" is removed from the data, the remaining uncollected tags could be contracted out by DMV on a "per tag basis" for collection by private contract. The profit incentive inserted into the procedure required to collect these rogue tags would prove to be far more effective in removing them from general circulation than the present senario.

In my review of the summary of the bill, the provision of forfiture of a vehicle driven by a defendant who was a registered owner of such a vehicle at the time of the offense institutes a policy necessary to control these drivers. I believe the provisions should proceed one step further and prohibit the registration of any vehicle to a habitually impaired driver. **If we don't want these people driving, don't permit them to register a vehicle.**

The additional provisions of impounding the vehicle driven by a habitual impaired driver appear somewhat severe when applied to the "innocent party". While we must send a strong signal to the driving public that habitually impaired drivers are not to be allowed possession of a vehicle in which to continue their rampant unchecked destruction, I would be remiss in my efforts to promote highway safety by failing to mention an abused spouse or a love torn parent watching powerlessly as their alcohol dependent loved one subversively commandeers the keys to a potential death machine. It would be a shame to have come so far towards meaningful legislation only to have this bill fail to pass out of concern for these innocent peripherals.

In summary, as a dealer of devices used by the habitually impaired drivers to inflict so much heartache and pain on our society, I request the following provisions be considered prior to the final vote of this bill:

*** Require Insurance Companies to report newly insured drivers to the DMV ***

*** Allow the DMV to enter into contracts for collection of uninsured tags ***

*** Prohibit the registration of vehicles to habitually impaired drivers ***
(*If not already so*)

Again, thank you all for the dedication and peserverence shown by all the sponsors and cosponsors of this much needed legislation. Your efforts are greatly appreciated.

Sincerely,

Mark Esposito

Mark Esposito, president
A&E Automax, Inc.
P.O. Box 90492
Raleigh, NC 27675

Enclosure

THIS SHOULD NEVER HAVE HAPPENED !

The tag for this vehicle had been issued by DMV to a habitual alcohol abuser with a revoked driver's license and no insurance and then subsequently targeted for collection by DMV Enforcement.

BUT NEVER COLLECTED !

Please allow DMV to contract out for collection of uninsured tags.

Attachment #3

'Why does this keep happening?'

A girl's death from a crash involving a habitual drunken driver sparks outrage. The General Assembly is studying proposals for a crackdown.

By Alan Scher Zagier
and Craig Jarvis
STAFF WRITERS

Even before his truck apparently crossed the center line — before it smashed into the side of a minivan and killed a 4-year-old girl in Durham Co[illegible] — Timothy Earl Blackwell ha[illegible]n the law.

Be[illegible]se Blackwell was a habitual offender with six previous DWI convictions, his license had been permanently revoked. But that didn't stop him from finding a vehicle to drive.

Repeatedly, state driving records show, habitual offenders such as Blackwell scoff at the penalties thrown at them and continue to drink and drive. And every year in North Carolina, hundreds of people are killed by drunken drivers.

Last year alone, 60,000 drivers in the state lost their licenses for some

Timothy Blackwell, arrested in February, is one of many repeat offenders who drink and drive.

STAFF PHOTO BY CHUCK LIDDY

period because they had been convicted of driving while impaired. Of those, state records show, 456 drivers permanently lost their licenses for collecting at least three DWI convictions in a seven-year period.

One of those was Blackwell, who was indicted last week on second-degree murder charges in the death of Megan Elizabeth Dail.

"It just breaks your heart," said Elizabeth Leach, whose 29-year-old son died in a 1990 wreck in Knightdale that involved a drunken driver. "Why does this keep happening?"

Megan's death — coupled with Blackwell's record — has unleashed painful memories for relatives of drunken-driving victims. It has angered police officers, who repeatedly pull over drivers under the influence or whose licenses have been suspended or revoked.

And it has also lent a human face to a proposed crackdown on repeat DWI offenders that the General Assembly will consider this session.

"When you are addicted to alcohol, you don't care what you do," said Lt. Gov. Dennis Wicker, who is spearheading the push for tougher DWI laws. "You don't care if you have a license, you don't care if you operate a car other than your own."

In a package of legislation intro-

See **DWI**, PAGE 6A

DWI

CONTINUED FROM PAGE 1A

duced last week. Wicker is proposing giving police the power to confiscate, at the time of arrest, the vehicles of suspected drunken drivers whose licenses have been revoked for previous DWI convictions. The DWI package also calls for mandatory one-year jail sentences and alcohol dependency treatment for those convicted of habitual drunken driving.

It is unclear how far the package will go in the legislature. Wicker is lending his clout to the measure in the Senate. Republicans in the House will discuss the package at their caucus today.

The numbers — and the stories behind them — speak to the extent of the problem in North Carolina despite continued efforts to crack down.

In addition to the thousands of suspensions in 1996, 27 drivers in North Carolina were found guilty of killing another person with their vehicles while legally drunk. Hundreds of other drivers were involved in accidents that resulted in death. Overall, drunken drivers killed 392 people in North Carolina in 1995, the last year for which numbers are available.

There are no statistics to show how many accidents involve drivers who had previously been found guilty of driving under the influence, but police and prosecutors don't have to look far to find evidence of how often it happens.

■ In September, a car plowed into three Broughton High School students waiting to cross a Raleigh street, critically injuring one boy. The driver, William Bradford Rice III, had been arrested four times in seven years on charges of driving while impaired.

■ In April 1994, Clyve Thomas Bowman, a 32-year-old Raleigh man with three DWI convictions and a permanently revoked license, tried to elude police and crashed into a pair of trees, killing his 9-year-old son, Bradley. He was charged with murder but was convicted of a lesser offense.

■ And when Joseph Zambito, 41, killed another motorist while fleeing police in Durham in 1993, it was his second drunken-driving arrest in two days and his third in three months. None of the cases had gone to court yet. Zambito was charged with second-degree murder in the death of Jasper Norris, a self-employed auto detailer, and was sentenced to 12 years in prison after pleading guilty to voluntary manslaughter.

Sgt. Larry Davis of the state Highway Patrol said he sees drivers with revoked licenses getting behind the wheel "over and over and over again."

The penalty for driving with a revoked license includes extending the revocation period, a fine of at least $200 and up to two years behind bars. Driving with a permanently revoked license is punishable by at least 30 days in jail and a fine of up to $1,000.

Not a deterrent

But those penalties, police said, are not deterring problem drinkers.

"To a lot of people, it means nothing" to have a license revoked, said Capt. Gregg Jarvies of the Chapel Hill Police Department. "It's an irritation."

"The fear of getting caught and the fear of the consequences in their mind don't outweigh the benefits. ... People need to get to work. They just refuse to give up their vehicle."

Blackwell's is a case in point.

Five months before the fatal wreck in Durham, Blackwell's driver's license was permanently suspended for habitual drunken driving. But that had never seemed to stop Blackwell, who had six previous DWI convictions, from driving. His record shows he had been found guilty 16 times of driving with a revoked license.

So when Blackwell needed transportation from his Granville County home to a job at a Durham concrete company on Feb. 27, he borrowed a 1974 Ford pickup registered to a cousin, according to state troopers who investigated the fatal crash.

Moments before Blackwell's truck slammed into the Dail family van on Guess Road near the Durham city limit, a trucker driving directly behind the pickup called 911 to warn authorities about an erratic driver.

"He's all over the road," the motorist told a dispatcher. "He just hit a damn mailbox. You ought to get somebody quick. This guy's gonna kill somebody."

Troopers found an open beer can and a bag of hypodermic needles and syringes in Blackwell's truck.

Vincent Rabil, a Forsyth County assistant district attorney, compares the car driven by a drunken driver to a bomb.

"People need to quit denying that this is a serious, culpable behavior," Rabil said. "It cuts across the spectrum of society."

In Winston-Salem, he has taken the apparently unprecedented step of seeking first-degree murder charges and the death penalty against two drivers involved in separate accidents.

In one case, a 69-year-old man is charged with causing the deaths of two Wake Forest University students in September 1996. In the other, a 24-year-old man is accused of wrecking a stolen car in January 1996 and killing a female passenger.

"I hope it sends a chilling message, especially to people who are social drinkers and think that two or three beers after work won't hurt anything."

Failure to enforce

Some advocates of tougher laws say part of the problem is that even existing laws are not adequately enforced.

"We're asked, 'How is somebody like this still on the road?' It's the judges, DAs and our legislators," says Karyn Brown, executive director of the state chapter of Mothers Against Drunk Driving.

"We have found that judges are not enacting the full sentence that they possibly can."

Blackwell, for example, struck a plea bargain in his habitual drunken-driving case, which was combined with an unrelated conviction for heroin possession. Eligible for a sentence of nearly five years, he was instead sentenced to 60 days in jail with three years' probation.

Durham County District Judge Richard Cheney, who did not preside over Blackwell's case, said a couple of days in jail is usually enough to scare people straight.

"It may be that a prison sentence will wake someone up, like an alcoholic who has to hit rock bottom to come up again," Cheney said.

"But for the serious problem drinker, that's a dilemma. There's nothing that can predictably help that person. It's a matter of keeping them off the road [and in jail]."

Chief District Judge Joe Buckner, of the Orange-Chatham judicial district, said that's not always possible.

"The only thing we can do is use the pens that the legislature gives us. We can't do more than that," he said. Until a North Carolina driver accumulates three DWI convictions in seven years, he said, the maximum jail sentence a judge can levy against a drunken driver is two years.

"I don't agree that judges are too soft, not the ones I know. But when looking at [a] maximum of a two-year sentence ... that's not a lot to work with," Buckner said.

And when a judge makes a sentencing decision, he or she often takes into account things like blood-alcohol level, whether there were any children involved and the person's criminal history, Wake County District Judge Michael Morgan said. Drunken drivers who are caught without injuring anyone usually get a break, he said.

"I guess it's comparable to if you shoot somebody and he died," Cheney said. "You're likely to be treated a whole lot differently than if he didn't die."

But some lawmakers say it's time to toughen existing laws.

The last time the legislature cracked down on drunken drivers was in 1993, when legislators lowered the legal blood-alcohol level from 0.10 to 0.08. Two years ago, the state adopted a "zero tolerance" law for alcohol consumption by underage drivers: for those under 21, any detectable alcohol in the blood is a violation.

But this time, Wicker says he wants to concentrate on the habitual offender.

In addition to Wicker's proposal, a separate bill would require judges to include previous DWI convictions, which are misdemeanors, when calculating prior felony records. Now, only misdemeanor convictions of death by vehicle can be considered as aggravating factors in felony sentencing.

"Taking their license is one thing," said Rep. Joanne Bowie, a Guilford County Republican who is sponsoring the bill. "Putting them away is another."

Changing the laws to treat drunken driving as a violent crime rather than a traffic infraction is long overdue, said Elizabeth Leach, who became active in MADD after the death of her son, Richard G. Burnette III.

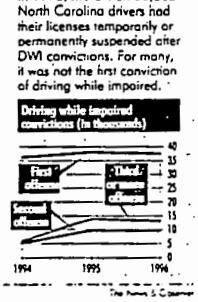
"When someone who is drunk kills someone, it is not an accident," she said. "It's like taking a loaded gun and firing into a crowd."

Staff writers Jena Heath, Amanda Garrett and Todd Nelson and news researcher Chris Hardesty contributed to this story.

Alan Scher Zagier can be reached at 956-2433 or azagier@nando.com.

Making a habit out of drunken driving

In 1996, more than 60,000 North Carolina drivers had their licenses temporarily or permanently suspended after DWI convictions. For many, it was not the first conviction of driving while impaired.



Several legislative proposals before the General Assembly seek to toughen DWI laws, particularly penalties for the worst repeat offenders. The proposals include:

- Giving police the power to confiscate, at the time of arrest, the vehicles of suspected drunken drivers whose licenses have been revoked for previous convictions of driving while impaired.
- Imposing mandatory one-year jail sentences and alcohol dependency treatment for people convicted of habitual drunken driving.
- Requiring judges to include previous DWI convictions, as misdemeanors, when calculating prior felony records. Death by vehicle is now the only misdemeanor conviction that can be considered in felony sentencing.
- Increasing the minimum sentence for the Level 1 (the most serious) DWI convictions, from 14 to 30 days.
- Giving judges the power to impose active sentences for Level 3, 4 and 5 DWI convictions, which involve fewer aggravating factors than levels 1 and 2.
- Increasing the period drivers charged with DWI lose their licenses from 10 to 30 days, with limited driving privileges after 10 days only if the driver undergoes a substance abuse evaluation and enrolls in treatment, if necessary.
- Allowing arresting officers to test for drugs, with a refusal by the driver leading to license revocation.
- Increasing funding for the state's Drug Alcohol Recovery Treatment Program in the corrections system and continuing care after incarceration.
- Expanding the Drug Awareness and Resistance Program into middle and high schools.

SCENE OF ACCIDENT: Roses and daffodils were left at the scene of an accident on Guess Road where a 4-year-old was killed by a drunken driver on Thursday afternoon.

The Herald-Sun/BERNARD THOMAS

Driver charged with murder

Man could face life in prison

By PAUL BONNER
The Herald-Sun

State troopers on Friday charged a chronic drunken driver with second-degree murder in the vehicle death of a 4-year-old Durham girl.

Timothy Earl Blackwell, 36, also got a new charge of habitual drunken driving, his second in a year.

"We felt there was sufficient background in this case to warrant a second-degree murder charge," said District Attorney James Hardin Jr. said.

That background includes Blackwell's five previous DWI convictions in Durham County. Blackwell also has at least one other DWI case pending in another North Carolina county, troopers said.

please see **DRIVER**/A2

FROM PAGE ONE

DRIVER

FROM A1

BLACKWELL

HUDSON

News of Wednesday's fatal accident caused a flurry among North Carolina chapters of Mothers Against Drunk Driving. Norman Beck, the organization's Durham County president, said he was busy all morning Friday speaking with members upset about Megan's death and Blackwell's driving record.

The organization's state office called for stronger DWI penalties.

"It's just unbelievable that this guy is walking around after he's demonstrated he's going to keep drinking and driving," Beck said.

Family all injured

Megan Elizabeth Dail was pronounced dead Thursday night, 10 hours after Blackwell smashed a pickup truck into the van in which Megan was riding on Guess Road near Rose of Sharon Road. Megan's father and two younger brothers, who were in the van, and her mother, driving another car directly in front, were all injured in the wreck.

The two boys, ages 1 and 2, were released Friday from Duke Hospital, where they were kept overnight for observation. The parents, Gregory and Sherry Dail, were treated for injuries and released Thursday.

Hardin recommended that troopers request the murder charge. While most murder charges involve a specific intent to kill, prosecutors aren't required to prove one, Hardin said.

Most traffic-death charges — usually manslaughter or death by vehicle — carry lesser penalties than second-degree murder, which carries a possible life imprisonment.

Before Thursday, Blackwell had been charged 21 times in Durham County with driving while his license was revoked. He also has been charged with offenses in Granville, Onslow and Pender counties.

Troopers were focusing Friday on how Blackwell obtained the 1974 Ford pickup he was driving. It didn't belong to him, they said, declining to say more until later in the investigation.

Blackwell's blood-alcohol level won't be available until after the State Bureau of Investigation completes a test of a blood sample taken soon after the crash, troopers said. He is charged with having an open beer in the truck, along with drug paraphernalia — syringes and needles.

Guilty plea gets 2 months

Blackwell pleaded guilty in September last year of habitual drunken driving and possession of heroin. According to court documents, he could have been sentenced to as much as 59 months on the two felonies. He was given two months.

The 60 days in jail were part of a "split sentence" that included three years on probation.

Superior Court Judge Orlando Hudson, who approved the plea bargain and who, according to court documents, set the sentence, said Friday he didn't recall the case. Under the state's Structured Sentencing Act, Hudson wasn't required to impose any imprisonment.

"Some people you cannot stop, because people don't respect the criminal justice system or any kind of law," Hudson said. "Short of putting people in jail for a period of time, there's nothing the court system and the police can do."

Hudson has on other occasions sent habitual DWI defendants to prison for long sentences, he noted, such as the 35-year sentence he imposed in Greensboro once. And with the proverbial acuity of hindsight, many court decisions could be second-guessed, he said. Added to that is the public's ambivalence between wanting to keep inmates in prison longer and its reluctance to pay for prisons to hold them.

"I think it's everybody's fault," he said.

Troopers said the Blackwell's batch of February 1996 charges resolved in the September plea did not involve a traffic accident, and they weren't aware of any other wrecks Blackwell had caused.

Amending law proposed

The Structured Sentencing Commission that devised the complex system of punishment and rehabilitation has asked the General Assembly to amend the habitual drunken driving law to give it a mandatory prison sentence. The highest of five levels of ordinary drunken driving carries a 14-day mandatory sentence.

Even without mandatory imprisonment for habitual DWI, judges now include jail in an estimated 99 percent of sentences, usually for at least a year, said the commission's chairman, Superior Court Judge Thomas Ross of Greensboro.

But it's not clear that habitual DWI necessarily carries any greater maximum tence than the highest level of plain . While Blackwell could have received a 44 months for his felonious habitual plea, the maximum sentence for m meanor DWI is 48 months.

A habitual drunken driver is one cha with DWI who has been convicted of offense at least three times previousl the last seven years.

If there is a cure, it's one that lies hid within an alcoholic's mind, one adep self-delusion, say those who counsel offenders.

There was the man in one of Rich Kuehn's classes for offenders, the man in his third or fourth DWI, backe car out of a driveway int of oncoming vehicle. It was at time.

"He said that in the future his would be not to drive in a rain stor Kuehn said.

Alcoholics Anonymous calls it a form insanity, said Kuehn, who now coordina court-mandated education classes for n chronic offenders at the Durham Coun on Alcohol and Drug Abuse.

"It's believing a lie — that when I dri this time, it'll be different, it'll be OK, I c handle it."

VISITOR REGISTRATION SHEET

Senate Judiciary Committee — April1, **1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shelley Doyle	S.A.D.D. @ Cary High School
Donald P. Broda	" "
Jeff Ingram	"
Michael S. Moore	"
Galen Wunderlich	"
Pete Martin	DHR-Substance Abuse Services
Barbara Thompson	Gov. Highway Safety Prog.
Wes Williams	MADD speaker
Jan Cartledge	MADD - Wake Co.
W.R. Price	N.C SHP 512 N. Salisbury St. Raleigh, NC
R.A. Benge	NCSHP 8446 North Tryon Street Charlotte N.C
T D Frye	NCSHP 205 Francis St High Pt NC 27268
AL EISELE	FORENSIC TEST FOR ALCONOL BR. DENNR
ERIC D. SMITH	CARY POLICE DEPT.
Mark Spaeingalli	Governor's Highway Safety Program
Joe Parker	GHSP
Shannon Bullock	GHSP
Tony Spence	DOT/DMV
ERIC ZOGRY	SENTENCING COMMISSION
Elaine Shedlock	Sentencing Commission
D Ross	"
L. Everhart	Citizen Action
Rebecca L. Primo	Senator Robert C. Carpenter's Daughter
Danny Prince	" " Son-in-law
Amanda Digby	NCATL
Judy Wallace	MADD - WAKE COUNTY
Tanja Vujic	NC Capital Defense Fund

VISITOR REGISTRATION SHEET

Senate Judiciary Committee April1, **1997**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kaaryn Brown	MADD-NC
Megan Dail	Representing Megan Dail
Thomas Dail	" " "
Sandra C Cooper	" " "
Curt Williams	Governor's Office
Lawrence Davis	NC Passenger Safety Assn
Lucy Johnson	Sen. Odom's Clerk (assistant)
Sybert Jackson	STAFF LT. GOVERNOR WICKER
Rudolph S. Clay	NCABHC
Jeremy Hall	Guest
Dirk Zahn	NCATA
Glenda M. George	2706 Herndon Rd. Durham NC 27713
Kenny Watson	5003 Creek Rd. Durham 27704
Sandra Wyatt	5003 Creek Rd. Durham 27704
Andy Ellen	NC Farm Bureau
Carolyn Truelove	DMV
Ed Hickey	Community Reinvestment Assoc. of NC
Jeanette Bradley	CRA-NC
Dale Simpson	Carolinas AGC
C Broadfield	DENR
[illegible]	Capital Strategies