1999

HOUSE
WAYS & MEANS
COMMITTEE

MINUTES

House Committee on Ways and Means
1999-2000 Legislative Session

Rep. Martin L. Nesbitt, Chair
Room 2204 - 733-5872
Committee Assistant - Jan Lee

Membership

Rep. Gordon Allen
Room 530 LOB
733-5662

Rep. Dan Blue
Room 1227
715-2528

Rep. Joni Bowie
Room 538 LOB
733-5877

Rep. Monroe Buchanan
Room 536 LOB
733-5825

Rep. Leslie Cox
Room 1221
733-5827

Rep. Michael Decker
Room 1021
733-5904

Rep. Rick Eddins
Room 1319
733-5800

Rep. Stan Fox
Room 1217
733-5757

Rep. Pryor Gibson
Room 419A LOB
715-3007

Rep. Phil Haire
Room 419B LOB
715-3005

Rep. Mary Jarrell
Room 2219
733-5749

Rep. Gene McCombs
Room 514 LOB
733-5881

Rep. Mickey Michaux
Room 1325
733-5772

Rep. Mia Morris
Room 1315
733-5741

Rep. Jane Mosley
Room 2221
733-5781

Rep. Art Pope*
Room 539 LOB
733-5809

Rep. Pete Oldham
Room 403 LOB
715-3026

Rep. Bill Owens
Room 632 LOB
733-0010

Rep. Liston Ramsey
Room 2217
733-5606

Rep. David Redwine
Room 635 LOB
733-5829

Rep. Edgar Starnes
Room 617 LOB
715-9664

Rep. Scot Thomas
Room 531 LOB
733-5863

Rep. Edith Warren
Room 417A LOB
715-3019

Rep. Connie Wilson
Room 501 LOB
733-5903

COMMITTEE STAFF:

Tim Hovis
Room 545 LOB
733-2578

Jeff Hudson
Room 545 LOB
733-2578

*** Appointed April 13, 1999 to fill Rep. Neely's Seat after his resignation April 7, 1999.**

HOUSE COMMITTEE ON WAYS AND MEANS

1999-2000 Legislative Session



Rep. Martin L. Nesbitt, Chairman



ep. Gordon Allen



Rep. Dan Blue



Rep. Joni Bowie



Rep. Monroe Buchanan



Rep. Leslie Cox



Rep. Michael Decker



Rep. Rick Eddins



Rep. Stan Fox



Rep. Pryor Gibson



Rep. Phil Haire



Rep. Mary Jarrell



Rep. Gene McCombs



Rep. Mickey Michaux



Rep. Mia Morris



Rep. Jane Mosley



RepChuck Neely Resigned 4/7/99 *



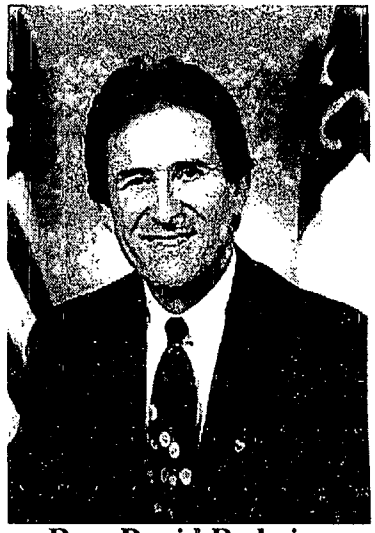
ep. Pete Oldham



Rep. Bill Owens



Rep. Liston Ramsey



Rep. David Redwine



Rep. Edgar Starnes



Rep. Scott Thomas



Rep. Edith Warren



Rep. Connie Wilson



*Rep. Art Pope appointed 4/13/99

ATTENDANCE

1999-2000 Legislative Session

HOUSE COMMITTEE ON WAYS AND MEANS

DATES	5/5	5/12	5/19	5/26	6/2	6/9	6/16	6/23	6/30	6/30 2nd	7/1	7/7	7/8		
Allen, Gordon	✓	✓	✓	✓				✓							
Blue, Dan				✓	✓			✓		✓	✓	✓	✓		
Bowie, Joni	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		
Buchanan, Monroe	✓	✓	✓	✓			✓	✓	✓			✓	✓		
Cox, Leslie	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
Decker, Michael		✓	✓	✓	✓	✓	✓	✓	✓						
Eddins, Rick	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		
Fox, Stan	✓	✓		✓		✓	✓	EX	✓	✓	✓	✓			
Gibson, Pryor		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			
Haire, Phil	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Jarrell, Mary	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		
McCombs, Gene	✓	✓	✓	✓		✓	✓	✓	✓			✓			
Michaux, Mickey	✓	✓	✓		✓			✓	✓	✓		✓	✓		
Morris, Mia	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		
Mosley, Jane				✓					EX	EX	EX	EX	EX		
Neely, Chuck(Resigned 4/7/99) Art Pope	took	seat	-	-	-	-	-	-	-	-	-	-	-	-	-
Oldham, Pete	✓	✓	✓	✓	✓	✓	✓		✓	✓	·	✓	✓		
Owens, Bill	✓	✓		✓			✓	EX	EX						
Pope, Art	✓	✓		✓		✓	✓				✓	✓			
Ramsey, Liston	EX	✓	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX		
Redwine, David	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX		
Starnes, Edgar	✓		✓	✓		✓	✓	✓	✓			✓	✓		
Thomas, Scott		✓		✓		✓	✓	✓	✓			✓			
Warren, Edith	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		
Wilson, Connie		✓	✓	✓		✓	✓	✓	✓		✓	✓			
Nesbitt, Martin, Chairman		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
			✓							✓					

Pete Cunningham

ATTENDANCE

1999-2000 Legislative Session

HOUSE COMMITTEE ON WAYS AND MEANS

DATES	2/24	3/10	3/17	3/24	3/31	4/7	4/14	4/14	4/20	4/21	4/21	4/22	4/23	4/26	4/27
								10:00	1:00	1:00	10:00	1:00	8:30	5:00	
Allen, Gordon	✓		✓	✓	✓			✓		✓				✓	
Blue, Dan		✓		✓	✓										
Bowie, Joni	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	
Buchanan, Monroe	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cox, Leslie	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Decker, Michael	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	✓	✓
Eddins, Rick	✓	✓				✓	✓	✓	✓	✓	✓	✓		✓	✓
Fox, Stan	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Gibson, Pryor		✓	✓	✓	✓		✓			✓	✓			✓	✓
Haire, Phil	✓	✓	✓	✓	✓	EX	✓	✓	✓	✓		✓	✓	✓	✓
Jarrell, Mary	✓	✓	✓		✓	✓	✓	EX	✓	✓	✓		✓	✓	✓
McCombs, Gene	✓	✓		✓	✓	✓					✓	✓	✓	✓	✓
Michaux, Mickey	✓		✓	✓	✓	✓	✓		✓	✓		✓	✓		✓
Morris, Mia	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	✓
Mosley, Jane	✓		✓	✓		✓	✓		✓	✓		✓	✓		
Neely, Chuck			✓		✓	✓	resigned 4/7								
Oldham, Pete	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Owens, Bill	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓		
Ramsey, Liston	✓	✓	✓	EX	✓	✓	✓		EX	✓	✓		✓	✓	✓
Redwine, David	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓			
Starnes, Edgar			✓	✓	✓	✓	✓	✓			✓		✓		✓
Thomas, Scott	✓	✓	✓		✓	✓	✓	✓				✓			✓
Warren, Edith	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Wilson, Connie	✓	✓	✓		✓		✓		✓	✓			✓	✓	✓
Rep. Art Pope									✓	✓			✓		✓
Nesbitt, Martin, Chairman	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — HOUSE: WAYS & MEANS — Valid Through 5-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 238	NYE	INCREASED USE OF SERVICES OF DISABLE	R -CH. SL 99-0020	03-04-99	03-11-99
H 239	HAIRE	COMMUNITY COLLEGE PROPERTY TRANSFERS	*R -CH. SL 99-0115	03-04-99	04-01-99
H 253	OWENS	SIPS NAME CHANGE/IRMC	*R -CH. SL 99-0347	03-04-99	03-25-99
H 275	**REDWINE**	**ZERO ESC TAX/TRAINING CONTRIBUTION**	***R -CH. SL 99-0321**	**03-04-99**	**04-01-99**
H 276	REDWINE	OMNIBUS ESC CHANGES	R -CH. SL 99-0340	03-04-99	04-19-99
H 277	REDWINE	"FAMILY FRIENDLY" UI EXCEPTION	*R -CH. SL 99-0196	03-04-99	04-19-99
H 278	REDWINE	TANF SEPARATION NONCHARGED	*H -PRES. TO GOV. 07-14	03-04-99	04-26-99
H 283	ALLEN	STATE TREASURER'S INVESTMENT AUTHORI	*R -CH. SL 99-0251	03-04-99	04-19-99
H 291	BADDOUR	CHIEF OF NC GUARD	*H -PRES. TO GOV. 07-21	03-04-99	04-19-99
H 319	GOODWIN	ADD'L DUTY OF SEC. OF STATE	R -CH. SL 99-0316	03-04-99	03-17-99
H 326	CULPEPPER	AQUARIUM EXHIBIT DISPOSAL	*R -CH. SL 99-0049	03-04-99	03-25-99
H 327	CULPEPPER	FOOD/VENDING AT NC AQUARIUMS	S -RE-REF COM ON APPROPR	03-04-99	03-25-99
H 330	OWENS	N.C. WORKFORCE DEVELOPMENT	H -RE-REF COM ON RULES	03-04-99	04-14-99
H 425	GRADY	DRIVERS LICENSE INFO NOT FOR SALE	H -RE-REF COM ON WAYS&MNS	03-30-99	
H 438	EDWARDS	HOUSING AUTHORITY EXEMPTION	*H -PRES. TO GOV. 07-20	04-20-99	04-23-99
H 454	ALLRED	SIMPLIFY BID PROCESS/CAP. PROJ.	H -REF TO COM ON WAYS&MNS	03-16-99	
H 461=	REDWINE	RELEASE OF DMV INFORMATION	*S -REF TO COM ON COMMERCE	03-16-99	04-19-99
H 467=	MORGAN	USE OF SCHOOL BUSES/US OPEN	H -REF TO COM ON WAYS&MNS	03-16-99	
H 470	DECKER	SUMMERFIELD COUNCIL REMOVAL	H -REF TO COM ON WAYS&MNS	03-17-99	
H 471	DECKER	AG USES/ZONING	*R -CH. SL 99-0057	03-17-99	04-26-99
H 525	ELLIS	PHONE SOLICITATIONS/CALLER ID	*S -REF TO COM ON INFOTECH	03-22-99	04-21-99
H 529	CAPPS	DISPLAY OF AMERICAN FLAG	*S -REF TO COM ON STLOCGVT	03-22-99	04-26-99
H 636	**OWENS**	**CONSUMER SERVICE QUALITY ASSURANCE**	**H -RE-ASSIGNED TO APP-GGOV**	**03-29-99**	**05-06-99**
H 671	**EDDINS**	**LEGISLATOR GUIDES**	**H -RE-ASSIGNED TO APP-GGOV**	**03-29-99**	**05-06-99**
H 820=	HENSLEY	VOLUNTARY SHARED LEAVE	*R -CH. SL 99-0170	04-01-99	04-22-99
H 821=	HENSLEY	RELOCATE NC GOVT. COMPETITION COMM.	S -REF TO COM ON STLOCGVT	04-01-99	04-07-99
H 843=	INSKO	MOORE COMMISSIONERS DISTRICTS	*H -RE-REF COM ON RULES	04-01-99	04-27-99
H 885	LUEBKE	SELF-SERVE STORAGE/LATE PAYMENTS	*H -PRES. TO GOV. 07-15	04-01-99	04-21-99
H 898	MCALLISTER	CHILD BICYCLE SAFETY ACT	*S -REF TO COM ON JUDICII	04-20-99	04-27-99
H 899	BRIDGEMAN	REAL ESTATE SALESMAN/BROKER LICENSUR	*R -CH. SL 99-0200	04-01-99	04-23-99

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — HOUSE: WAYS & MEANS — Valid Through 5-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 918=	MCLAWHORN	INCREASE DEATH BENEFITS	H -RE-REF COM ON APPROP	04-05-99	04-20-99
H 923=	BADDOUR	SPA COLA CHANGES	*S -REF TO COM ON APPROPR	04-05-99	04-07-99
H 942	GOODWIN	CHILD PERFORMERS STUDY	*H -RE-REF COM ON RULES	04-07-99	05-13-99
H 951	EDWARDS	TENANTS ON HOUSING AUTHORITY	*R -CH. SL 99-0146	04-08-99	04-23-99
H 964	JARRELL	MUNICIPAL INCORPORATION PROCESS	*H -PRES. TO GOV. 07-20	04-12-99	06-07-99
H 968	NESBITT	AMEND CONTESTED CASE PROCEDURE	*S -RE-REF COM ON JUDICII	04-12-99	04-22-99
H 983	WAINWRIGHT	PROPERTY TRANSFERS TO NONPROFITS	HF-POSTPONED INDEFINITELY	04-12-99	
H 984	WAINWRIGHT	ADVERTISEMENT OF STATE LEASES LTD.	HF-POSTPONED INDEFINITELY	04-12-99	
H 985	WAINWRIGHT	STATE LAND TRANSACTIONS	*R -CH. SL 99-0252	04-12-99	04-27-99
H 985	WAINWRIGHT	STATE LAND TRANSACTIONS	*R -CH. SL 99-0252	05-31-99	
H1000	**ALEXANDER**	**ADDICTION RESEARCH AUTHORITY**	**H -RE-ASSIGNED TO APP-HRES**	**04-13-99**	**04-27-99**
H1051=	BADDOUR	EXTEND TRANSPARK INVESTMENT AUTHORIT	H -REF TO COM ON WAYS&MNS	04-14-99	
H1060	BUCHANAN	LEGISLATORS' LONGEVITY PAY	*H -RE-REF COM ON APPROP	04-15-99	05-20-99
H1071=	ALEXANDER	HANDICAPPED LAW CHANGES	*R -CH. SL 99-0160	04-15-99	04-27-99
H1076	COX	FIRE MAINS COMPLY WITH BUILDING CODE	*R -CH. SL 99-0123	04-15-99	04-23-99
H1092	HOWARD	SOCIAL WORKER IMMUNITY/DEFENSE	H -REF TO COM ON WAYS&MNS	04-15-99	
H1096	HILL	REGISTER OF DEEDS AMENDS	*H -RE-REF COM ON WAYS&MNS	05-12-99	
H1114	WRIGHT	ENHANCING EMERGENCY MEDICAL SERVICES	*H -RE-REF COM ON FINANCE	04-15-99	06-10-99
H1120	WRIGHT	AUTHORIZE PUBLIC HOSPITAL DEBT	*H -PRES. TO GOV. 07-15	04-15-99	06-23-99
H1143	BUCHANAN	LEGISLATORS' PER DIEM/EXPENSES	H -RE-REF COM ON APPROP	04-15-99	05-27-99
H1145	MICHAUX	CLOSE LOOPHOLE MIN. HOUS. STAND - 2	H -REF TO COM ON WAYS&MNS	04-15-99	
H1149	JEFFUS	MODULAR CONSTRUCTION REQUIREMENTS	*S -REF TO COM ON COMMERCE	04-15-99	04-27-99
H1164	LUEBKE	ENERGY SAVINGS CONTRACTS STUDY	*H -RE-REF COM ON RULES	04-15-99	05-27-99
H1173	MCCRARY	PERSONAL INFORMATION DISCLOSURES	*H -PRES. TO GOV. 07-20	04-15-99	04-27-99
H1195	ROGERS	SPECIAL NEEDS COMMISSION MODIFIED	H -RE-REF COM ON RULES	04-15-99	04-27-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*H -PRES. TO GOV. 07-20	04-23-99	04-27-99
H1213=	ROGERS	SUNSET/ENERGY SAVINGS CONTRACTS	HF-POSTPONED INDEFINITELY	04-15-99	
H1437	**CAPPS**	**ADS FOR CAR REPAIRS/FUNDS**	**H -RE-REF COM ON APPROP**	**04-29-99**	**05-13-99**
S 56=	LEE	SUNSET/TERM OF ENERGY SAVINGS CTRCT	*R -CH. SL 99-0235	04-23-99	05-27-99
S 108	MILLER B	SPECIAL OLYMPIC SCHOOL BUS USE	*R -CH. SL 99-0001	02-18-99	02-24-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium HOUSE: WAYS & MEANS Valid Through 5-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 192	REEVES	FILING OF FOREIGN AGREEMENTS	*R -CH. SL 99-0260	04-13-99	06-17-99
S 212	RAND	MORTUARY SCIENCE CHANGES	*S -PRES. TO GOV. 07-14	04-29-99	07-01-99
S 255	ALBERTSON	STATE AGENCY TELEPHONE MENUS	S -PRES. TO GOV. 07-14	04-06-99	07-05-99
S 283	SHAW L	NC PURCHASING OPPORTUNITIES	*S -PRES. TO GOV. 07-15	04-27-99	07-08-99
S 284	SHAW L	SMALL BUSINESS PROCUREMENT ACT	*S -PRES. TO GOV. 07-15	04-08-99	07-08-99
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	04-27-99	06-23-99
S 370	BALLANCE	OSHA WITNESS STATEMENTS	*S -PRES. TO GOV. 07-19	04-28-99	07-01-99
S 385=	LEE	USE OF SCHOOL BUSES/US OPEN	*R -CH. SL 99-0176	04-27-99	06-07-99
S 515=	KERR	VOLUNTEER FIRE DEPT/RESCUE WORKERS	*R -CH. SL 99-0319	04-13-99	06-17-99
S 532	CARTER	ASHEVILLE CIVIL SERV. BD./ZONING REF	*R -CH. SL 99-0303	07-05-99	07-07-99
S 776	RAND	AMEND PURCH./CONTRACT EXEMPTIONS	*S -PRES. TO GOV. 07-19	04-27-99	07-08-99
S 796	HOYLE	GENERAL CONTRACTORS PROPERTY	R -CH. SL 99-0349	04-23-99	06-23-99
S 877	KERR	WORKERS' COMP./NATIONAL/STATE GUARD	*S -PRES. TO GOV. 07-15	04-28-99	07-05-99
S 927	KINNAIRD	BLIND SERVICES TECHNICAL CHANGES	*H -RE-REF COM ON WAYS&MNS	04-27-99	06-07-99
S 927	KINNAIRD	BLIND SERVICES TECHNICAL CHANGES	*H -RE-REF COM ON WAYS&MNS	06-14-99	
S 934=	CARTER	HANDICAPPED LAW CHANGES	H -REF TO COM ON WAYS&MNS	04-27-99	
S 966	CLODFELTER	BUILDING INSPECTION CONTRACTS	*S -PRES. TO GOV. 07-19	04-28-99	07-07-99
S 979	CARTER	REPEAL PUBLIC SETTLEMENT RESERVE FUN	*H -REF TO COM ON WAYS&MNS	04-28-99	
S1004	KINNAIRD	GEOLOGIST LICENSURE	*R -CH. SL 99-0355	04-29-99	07-01-99
S1058	CLODFELTER	GENERAL CONTRACTORS LICENSURE	*S -PRES. TO GOV. 07-15	04-28-99	07-08-99
S1143	WARREN E	CONTRACTS CONTINUE/EURO. UNION	*R -CH. SL 99-0312	05-03-99	05-25-99

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HOUSE COMMITTEE
ON
WAYS AND MEANS

February 24, 1999

MINUTES

The House Committee on Ways and Means met at 12:00 p.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Chairman Martin Nesbitt called the meeting to order and recognized staff members Tim Hovis and Jeff Hudson from the Legislative Research Division.

He recognized Senator Brad Miller to explain **SB 108 (Special Olympic School Bus Use)** which was on the Agenda for consideration. Senator Miller explained that the bill would amend SL 98-10 to permit any public school system to use school buses to provide transportation for persons associated with the 1999 Special Olympics World Summer Games for the Period June 1st through July 10th 1999.

Rep. Buchanan moved for a favorable report.

Reps. Cox, Bowie, and Jarrell had questions about liability and costs and were told that the Special Olympics carries its own liability insurance.

The bill passed the Committee with a favorable report and the meeting was adjourned at 12:10 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 108
State and Local Government Committee Substitute Adopted 2/17/99

Short Title: Special Olympic School Bus Use. (Public)

Sponsors:

Referred to:

February 16, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE STATE TO PROVIDE SCHOOL AND ACTIVITY BUSES FOR THE TRANSPORTATION NEEDS OF THE SPECIAL OLYMPICS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1998-10 reads as rewritten:

"Section 2. Notwithstanding any other provisions of law, the Johnston County, Wake County, Orange County, ~~and~~ Durham County and any public school ~~systems~~ system within which there is a participating host town may permit, under terms and conditions set by the public school ~~systems,~~ system, the use and operation of public school buses and activity buses by the 1999 Special Olympics World Summer Games Organizing Committee, Inc., for the transportation of persons officially associated with the 1999 Special Olympics World Summer Games for the ~~periods from May 28, 1998, through May 31, 1998, and~~ period from ~~June 19,~~ June 15, 1999, through July 10, 1999."

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

February 16, 1999

S 108. SPECIAL OLYMPIC SCHOOL BUS USE. *TO PERMIT THE STATE TO PROVIDE SCHOOL AND ACTIVITY BUSES FOR THE TRANSPORTATION NEEDS OF THE SPECIAL OLYMPICS.* Amends SL 98-10 to permit any public school system to use school buses to provide transportation for persons associated with the 1999 Special Olympics World Summer Games for the period June 1, 1999, through July 10, 1999.

Intro. by Miller.

Ref. to St. & Loc. Gov. UNCODIFIED

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☒ Committee Substitute for
S.B. 108 A BILL TO BE ENTITLED AN ACT TO PERMIT THE STATE TO PROVIDE SCHOOL AND ACTIVITY BUSES FOR THE TRANSPORTATION NEEDS OF THE SPECIAL OLYMPICS.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

4/24/97

HOUSE COMMITTEE
ON
WAYS AND MEANS
MINUTES
March 10, 1999

The House Committee of Ways and Means met in Room 1228 of the Legislative Building, Raleigh, N.C.

Rep. Martin Nesbitt, Chairman called the meeting to order at 10:00 a.m

The first item on the agenda was **HB 238 (Increased Use of Services of Disabled).** Rep. Edd Nye, bill sponsor, was recognized to explain the bill.

John Leaston from the Department of Administration, Division of Purchases and Contracts spoke in favor of the bill.

Rep. Ramsey moved to amend the bill and his motion passed.

Rep. Morris moved to give the original bill an unfavorable report, to create a Committee Substitute for **HB 238** and to give the Committee Substitute a favorable report. Her motion passed.

HB 319 was also on the agenda, but was removed from consideration at the request of the bill sponsor.

There being no more business, the meeting adjourned at 10:20 a.m.

Representative Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

HOUSE COMMITTEE ON WAYS AND MEANS

Agenda
March 10, 1999

10:00 a.m.

Bills to be considered:

238 **Increase Use of Services of Disabled.**
Rep. Nye, Bill Sponsor

319 **Additional Duty of Secretary of State**
Rep. Goodwin, Bill Sponsor
(Withdrawn for consideration at the request of the Bill Sponsor)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 238

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

H238-ASB-001.01

Date 3-10- ,1999

Comm. Sub. [NO]
Amends Title [NO]
FIRST EDITION

Representative

1 moves to amend the bill on page 1, line 8,
2 by inserting the word "and" between the word "1996," and the word
3 "applies".

SIGNED Linton Ramsey
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 238

Short Title: Increase Use of Services of Disabled. (Public)

Sponsors: Representatives Nye; Justus, Wainwright, Gardner, and Melton.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET FROM LAWS ENCOURAGING THE PURCHASE OF COMMODITIES AND SERVICES OFFERED BY BLIND AND BY SEVERELY DISABLED PERSONS.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 265 of the 1995 Session Laws reads as rewritten:

"Sec. 5. This act becomes effective January 1, 1996, applies to contracts for which bids or offers are solicited on or after that ~~date, and expires January 1, 2000.~~ date."

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

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Terrence D. Sullivan, Director
Research Division
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March 10, 1999

MEMORANDUM

To: Representative Martin L. Nesbitt, Jr., Chair
House Ways and Means Committee

From: Jeff Hudson, Committee Counsel

Re: **House Bill 238—Increase Use of Services of Disabled (Nye)**

House Bill 238 removes the January 1, 2000 sunset from Chapter 265 of the 1995 Session Laws, an act to encourage the purchase of commodities and services offered by blind and severely disabled persons. Chapter 265 authorizes, but does not require, State agencies, local governments, and other governmental agencies to purchase goods and services directly from nonprofit work centers for the blind and severely disabled without soliciting bids. Chapter 265 also requires the Department of Administration to report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program.

House Bill 238 is effective when it becomes law.

Senate Bill 234—Purchase Encouragement Sunset Off (Senators Garrou, Cooper, and Perdue) also removes the January 1, 2000 sunset from Chapter 265 of the 1995 Session Laws.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION
RATIFIED BILL

CHAPTER 265
SENATE BILL 519

AN ACT TO ENCOURAGE THE PURCHASE OF COMMODITIES AND SERVICES OFFERED BY BLIND AND BY SEVERELY DISABLED PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-49 is amended by adding the following new subdivision:

"(7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services."

Sec. 2. G.S. 143-48 reads as rewritten:

"**§ 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose; required annual reports.**

(a) Policy. -- It is the policy of this State to encourage and promote the use of small, minority, physically handicapped and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of small, minority, physically handicapped and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. -- Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned ~~businesses and~~ businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this section, a business in one of the categories above means one:

a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and

b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A 'disabled business enterprise' means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A 'nonprofit work center for the blind and the severely disabled' means an agency:

a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;

b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and

c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a through d.

(3) A disabled person means a ~~'handicapped person' as defined in G.S. 168A-3.~~ person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees."

Sec. 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-48.2. Procurement program for nonprofit work centers for the blind and the severely disabled.**

(a) An agency subject to the provisions of this Article for the procurement of goods may purchase goods directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The purchase may not exceed the applicable expenditure benchmark under G.S. 143-53.1.

(2) The goods must not be available under a State requirements contract.

(3) The goods must be of suitable price and quality, as determined by the agency.

(b) An agency subject to the provisions of this Article for the procurement of services may purchase services directly from a nonprofit work center for the blind and severely disabled, subject to the following provisions:

(1) The services must not be available under a State requirements contract.

(2) The services must be of suitable price and quality, as determined by the agency.

(c) The provisions of G.S. 143-52 shall not apply to purchases made pursuant to this section. However, nothing in this section shall prohibit a nonprofit work center for the blind and severely disabled from submitting bids or making offers for contracts under G.S. 143-52.

(d) For the purpose of this subsection, a 'nonprofit work center for the blind and severely disabled' has the same meaning as under G.S. 143-48."

Sec. 4. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.5. Purchases from nonprofit work centers for the blind and severely disabled.**

Notwithstanding G.S. 143-129, a city, county, or other governmental entity subject to this Article may purchase goods and services directly from a nonprofit work center for the blind and severely disabled, as defined in G.S. 143-48.

The Department of Administration shall report annually to the Joint Legislative Commission on Governmental Operations on its administration of this program."

Sec. 5. This act becomes effective January 1, 1996, applies to contracts for which bids or offers are solicited on or after that date, and expires January 1, 2000.

In the General Assembly read three times and ratified this the 15th day of June, 1995.

DENNIS A. WICKER

Dennis A. Wicker
President of the Senate

HAROLD J. BRUBAKER

Harold J. Brubaker
Speaker of the House of Representatives

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **March 10, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Deason	Capitol Group
Helen Lipman	Meck. Co. DSS
Roz Smith	NC Child Care Coalition
Joyce L. Ashley	NC Dept. of Admin
John Leaston	DOA P&C
[illegible]	505
Hal Miller	NCACCT
Dolores J. Faison	AKA Sorority Jacksonville, NC
Thomasine Moore	AKA Sorority, Jacksonville, NC

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 238 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET FROM LAWS ENCOURAGING THE PURCHASE OF COMMODITIES AND SERVICES OFFERED BY BLIND AND BY SEVERELY DISABLED PERSONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes

March 17, 1999

The House Committee on Ways and Means met on Wednesday, March 27, 1999 in Room 1228 of the Legislative Building, Raleigh, NC. Rep. Martin Nesbitt, Chairman, called the meeting to order at 10:00 a.m. and recognized Rep. Bill Culpepper to explain **HB 326** which was first on the agenda.

HB 326 (Aquarium Exhibit Disposal/AB). *Summary attached as Exhibit I.*

Rep. Culpepper explained that this bill transfers the authority to dispose of exhibits in the collections of the NC Aquariums from the Department of Administration to the Division of North Carolina Aquariums in the Department of Environment and Natural Resources. It also authorizes the Division of NC Aquariums to dispose of exhibits through sale, lease, or trade, but requires the Division to do so in accordance with the generally accepted practices of zoos and aquariums accredited by the American Association of Zoos and Aquariums. The bill also directs the Division of NC Aquariums to credit to the NC Aquariums Fund the net proceeds from any sale or lease of an exhibit. Funds held in the NC Aquariums Fund are used for repair, maintenance, educational exhibit construction, and operational expenses of the aquariums as well as to match private funds raised for these purposes.

Rep. Connie Wilson moved for a favorable report.

Committee discussion followed. Rep. Owens was concerned about the private sale-upset bid procedure. Rhett White from the Division of Aquariums was recognized by the Chairman. He assured Rep. Owens that there could always be mechanisms put in place to address his concerns.

The bill was temporarily displaced.

Rep. Culpepper was recognized to explain **HB 327 (Food/Vending at NC Aquariums/AB)** ***Summary attached as Exhibit II.***

He said that **HB 327** allows the Division of NC Aquariums, rather than the North Carolina Division of Services for the Blind, to operate or contract for the operation of food and vending services that are provided at the NC Aquariums.

Rep. Michaux said he opposed the bill because he didn't think these services should be taken away from the Division of the Blind. Rep. Neely wondered why this was even being proposed. Rhett White explained that the Division of the Blind said it could not provide the services need at each Aquarium, that visitors want more services. Rep. Michaux asked to hear from the Division of the Blind. Debbie Jackson from that division

agreed with Mr. White that it probably was not possible that they could find a blind vendor at a location like Fort Fisher because of seasonal isolation.

More discussion followed. Rep. Gibson moved to amend the bill, however, that motion was not voted on and the bill was temporarily displaced.

Rep. Ways Goodwin was recognized to explain **HB 319 (Add'l Duty of Sec. Of State/AB)** *Bill Summary attached as Exhibit III.*

Sheila Pope, Secretary of State General Counsel was recognized. She explained that the bill would add to the list of the Secretary's duties the application and acceptance of federal and private grants to effectuate the purposes of the Nonprofit Corporation Act and aid in the development of nonprofit corporations. The Secretary must comply with the terms of the grants and act in accordance with the Executive Budget Act which requires State agencies to report the expenditure of federal funds in the same manner as State funds.

Rep. Owens moved to give the bill a favorable report and the motion passed.

The meeting was adjourned at 10:50 a.m.

Representative Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

HOUSE COMMITTEE ON WAYS AND MEANS

Agenda
March 17, 1999

10:00 a.m.

Bills to be considered:

HB 319 Additional Duty of Secretary of State
Rep. Goodwin, Bill Sponsor

HB 326 Aquarium Exhibit Disposal
Rep. Culpepper, Bill Sponsor

HB 327 Food/Vending at NC Aquariums
Rep. Culpepper, Bill Sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 326

Short Title: Aquarium Exhibit Disposal/AB. (Public)

Sponsors: Representatives Culpepper; Smith and Wainwright.

Referred to: Ways & Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DIVISION OF NORTH CAROLINA AQUARIUMS TO DISPOSE OF EXHIBITS FROM THE COLLECTIONS OF THE NORTH CAROLINA AQUARIUMS IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES FOR ACCREDITED ZOOS AND AQUARIUMS AND TO REQUIRE THAT THE NET PROCEEDS OF ANY SALE OR LEASE OF EXHIBITS BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-289.41(a) is amended by adding a new subdivision to read:

"(1c) Notwithstanding Article 3A of Chapter 143 of the General Statutes, and G.S. 143-49(4), dispose of any exhibit, exhibit component, or object from the collections of the North Carolina Aquariums by sale, lease, or trade. A sale, lease, or trade under this subdivision shall be conducted in accordance with generally accepted practices for zoos and aquariums that are accredited by the American Association of Zoos and Aquariums. After deducting the expenses attributable to the sale or lease, the net proceeds of any sale or lease shall be credited to the North Carolina Aquariums Fund."

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

Exhibit I

HOUSE BILL 326:
Aquarium Exhibit Disposal/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Culpepper
Date:	March 17, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 326 authorizes the Division of North Carolina Aquariums, rather than the Department of Administration, to sell, lease, or trade exhibits contained in the collections of the North Carolina Aquariums.

CURRENT LAW: Under Article 3A of Chapter 143 of the General Statutes, the Department of Administration is designated as the State agency for State surplus property and is authorized to sell all supplies, materials, and equipment that are surplus, obsolete, or unused. Under this authority, the Department of Administration disposes of exhibits contained in the collections of the North Carolina Aquariums. Receipts from the sale of State surplus property, including aquarium exhibits, are credited to the Office of State Treasurer, Nontax Revenues.

BILL ANALYSIS: House Bill 326 transfers the authority to dispose of exhibits in the collections of the North Carolina Aquariums from the Department of Administration to the Division of North Carolina Aquariums in the Department of Environment and Natural Resources. House Bill 326 authorizes the Division of North Carolina Aquariums to dispose of exhibits through sale, lease, or trade, but requires the Division to do so in accordance with the generally accepted practices of zoos and aquariums accredited by the American Association of Zoos and Aquariums. House Bill 326 also directs the Division of North Carolina Aquariums to credit to the North Carolina Aquariums Fund the net proceeds from any sale or lease of an exhibit. Funds held in the North Carolina Aquariums Fund are used for repair, maintenance, educational exhibit construction, and operational expenses of the aquariums as well as to match private funds raised for these purposes.

BACKGROUND: North Carolina owns and operates three aquariums, the North Carolina Aquarium at Fort Fisher, the North Carolina Aquarium at Pine Knoll Shores, and the North Carolina Aquarium on Roanoke Island.

- The North Carolina Aquarium at Fort Fisher is located in Kure Beach and has been in operation since 1976. The aquarium holds 1,371 specimens of 189 different species of reptiles, amphibians, fish, and invertebrates. Attendance for the aquarium during 1997 was approximately 370,000 visitors.
- The North Carolina Aquarium at Pine Knoll Shores is located in Atlantic Beach and has been in operation since 1976. The aquarium holds 413 specimens of 70 different species of reptiles, fish, and invertebrates. Attendance for the aquarium during 1997 was approximately 302,000 visitors.
- The North Carolina Aquarium on Roanoke Island is located in Manteo and has been in operation since 1976. The aquarium holds 995 specimens of 79 different species of reptiles, fish, and invertebrates. Attendance for the aquarium during 1997 was approximately 250,000 visitors.

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

§ 143B-289.41. Division of North Carolina Aquariums — organization; powers and duties.

(a) The Division of North Carolina Aquariums shall be organized as prescribed by the Secretary of Environment and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) Establish and maintain the North Carolina Aquariums.

(1b) Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives periodically.

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary of Environment and Natural Resources on the most appropriate use consistent with the goals and objectives of the Aquariums.

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and objectives.

d. Recommend to the Secretary of Environment and Natural Resources any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium programs.

e. Review Aquarium budget submissions to the Secretary of Environment and Natural Resources.

f. Recruit and recommend to the Secretary of Environment and Natural Resources candidates for the positions of directors of the Aquariums.

g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.43.

(2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

(4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

(7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section. (1985, c. 202, s. 3; 1991, c. 320, s. 3; 1993, c. 321, ss. 28(d), 28(e); 1997-286, s. 3; 1997-400, s. 6.3(b), (c); 1997-443, ss. 11A.119(a), 11A.123.)

Editor's Note. — This section was formerly G.S. 143B-390.2. It was recodified as 143B-289.20 by Session Laws 1993, c. 321, s. 28(d), effective July 1, 1993. This section was subsequently recodified as 143B-289.41 by Session Laws 1997-400, s. 6.3(b).

Session Laws 1997-400, s. 1.1, provides: "This act shall be known as the 'Fisheries Reform Act of 1997'".

Session Laws 1997-400, s. 6.13, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-286, s. 3, effective July 10 1997, substituted "Division of North Carolina Aquariums" for "Office of Marine Affairs" in the catchline; in the introductory language of subsection (a) substituted "Division of North Carolina Aquariums" for "Office", deleted "of the Department" preceding "of Environment", and inserted "shall"; deleted "of the Department" preceding "of Environ-

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 327

Short Title: Food/Vending at NC Aquariums/AB. (Public)

Sponsors: Representatives Culpepper; Smith and Wainwright.

Referred to: Ways & Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF NORTH CAROLINA AQUARIUMS, RATHER THAN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO OPERATE OR CONTRACT FOR FOOD AND VENDING SERVICES AT THE NORTH CAROLINA AQUARIUMS, AND TO REQUIRE THE NET PROCEEDS OF THESE FOOD AND VENDING SERVICES TO BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 111-42 reads as rewritten:

"**§ 111-42. Definitions as used in this Article.**

(a) 'Regular vending facility' means a vending facility where food preparation or cooking is not done on the State property.

(b) 'State agency' means department, commission, agency or instrumentality of the State.

(c) 'State property or State building' means building and land owned, leased, or otherwise controlled by the State, exclusive of schools, colleges and universities, the North Carolina State Fair, the North Carolina Aquariums, and the State Legislative Building.

(d) 'Vending facility' includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

(e) 'Visually handicapped' means a person who is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential and who is registered pursuant to G.S. 111-4."

Section 2. Part 5C of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ G.S. 143B-289.45. Proceeds from food and vending services.**

The net proceeds of revenue generated by food and vending services that are provided at the North Carolina Aquariums and are operated by or whose operation is contracted for by the Division of North Carolina Aquariums shall be deposited in the North Carolina Aquariums Fund."

Section 3. This act shall not be construed to alter any contract for food and vending services at the North Carolina Aquariums that is in force at the time this act becomes law.

Section 4. This act becomes effective July 1, 1999.

Exhibit II

HOUSE BILL 327:
Food/Vending at NC Aquariums/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Culpepper
Date:	March 17, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 327 allows the Division of North Carolina Aquariums, rather than the North Carolina Division of Services for the Blind, to operate or contract for the operation of food and vending services that are provided at the North Carolina Aquariums.***

CURRENT LAW: Under G.S. 111-41, visually handicapped persons are given a preference in the operation of vending facilities located on *State property*. G.S. 111-42(c) defines State property to include the North Carolina Aquariums.

BILL ANALYSIS: House Bill 327 excludes the North Carolina Aquariums from the definition of State property found in G.S. 111-42(c). With this exclusion, the North Carolina Aquariums would not have to give a preference to visually handicapped persons in the operation of vending facilities at the North Carolina Aquariums. House Bill 327 also provides that the net proceeds generated by food and vending services that are operated by or whose operation is contracted for by the Division of North Carolina Aquariums will be deposited in the North Carolina Aquariums Fund. Finally, House Bill 327 provides that this act does not alter any contract for food and vending services at the North Carolina Aquariums that is in force when the act becomes law.

EFFECTIVE DATE: This act is effective July 1, 1999.

§ 111-32. Findings under § 111-30 not competent as evidence in other proceedings.

The findings of fact under the provisions of G.S. 111-30 shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in G.S. 111-30 to 111-33. (1961, c. 666, s. 2.)

§ 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors.

Nothing in G.S. 111-30 to 111-33 is to be construed as affecting that portion of the State plan for aid to the blind which provides that payments for eligible blind minors should be made to the parent, legal guardian, relatives or other persons "in loco parentis" of the blind minor, and that payments may be made to the minor if he is emancipated. (1961, c. 666, s. 2.)

§ 111-34: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-35. Authority of director of social services.

The respective boards of county commissioners of each county are hereby authorized to empower and confer upon the county director of social services for their respective counties the authority to perform any or all acts or functions which the previous sections of this Article direct or authorize the county boards of commissioners to perform. Any act or function performed by a county director of social services under the authority of this section shall be reported by him to the respective county board of commissioners for its review, and for alternative action or disposition where deemed appropriate by such board. Provided that the respective boards of county commissioners shall make no alternative or different disposition of a matter which the county director of social services is empowered to act upon which would prejudicially affect the status of any aid to the blind recipient without first affording such recipient reasonable notice and opportunity to be heard. (1971, c. 348, s. 1.)

§§ 111-36 to 111-40: Reserved for future codification purposes.

ARTICLE 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources.

In order to promote the employment and the self-sufficiency of visually handicapped persons in North Carolina, State agencies shall upon the request of the Department of Human Resources give

preference to visually handicapped persons in the operation of vending facilities on State property. The Department of Human Resources shall encourage and assist the operation of vending facilities by visually handicapped persons. (1973, c. 1280, s. 1.)

Editor's Note. — Session Laws 1985, c. 730, ss. 1 to 3, provide:

"Notwithstanding Article III of Chapter 111 of the General Statutes, with the approval of the Department of Cultural Resources, the Friends of Elizabeth II, Incorporated, may operate vending machines on the site grounds of the Elizabeth II.

"Sec. 2. Eighty percent (80%) of the profits from activities authorized by Section 1 of this act shall be used to support the Elizabeth II, the ship's boat, and related activities. The remainder of the profits shall be used for the activities of the Roanoke Voyages and Elizabeth II Commission.

"Sec. 3. This act is effective upon ratification."

The act was ratified July 12, 1985.

§ 111-42. Definitions as used in this Article.

(a) "Regular vending facility" means a vending facility where food preparation or cocking is not done on the State property.

(b) "State agency" means department, commission, agency or instrumentality of the State.

(c) "State property or State building" means building and land owned, leased, or otherwise controlled by the State, exclusive of schools, colleges and universities, the North Carolina State Fair, and the State Legislative Building.

(d) "Vending facility" includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

(e) "Visually handicapped" means a person who is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential and who is registered pursuant to G.S. 111-4. (1973, c. 1280, s. 1.)

§ 111-43. Installation of coin-operated vending machines.

In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of vending facilities operated by the visually handicapped. (1973, c. 1280, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 319

Short Title: Add'l Duty of Sec. of State/AB. (Public)

Sponsors: Representatives Goodwin; and Wainwright.

Referred to: Ways & Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO APPLY FOR AND ACCEPT GRANT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-36 reads as rewritten:

"**§ 147-36. Duties of Secretary of State.**

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon the Secretary by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by the Governor, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at the Secretary's office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which the Secretary shall take from every person to whom a grant shall be delivered, a receipt for the same; but may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;
(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;
(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;
(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;
(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;
(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;
(13) To receive and keep all oaths of public officials required by law to be filed in the Secretary's office, and as Secretary of State, is fully empowered to administer official oaths to any public official of whom an oath is required;
(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State; ~~and~~
(15) To regulate the solicitation of contributions pursuant to Chapter 131F of the General ~~Statutes.~~ Statutes; and
(16) To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and shall expend grant funds pursuant to Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act."

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

Exhibit III

North Carolina General Assembly
Legislative Services Office

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

ne W. Robinson, Director
nistrative Division
n 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

March 9, 1999

MEMORANDUM

To: Rep. Martin L. Nesbitt, Jr., Chairman
House Ways and Means Committee

From: Tim Hovis, Committee Counsel

Re: **House Bill 319—Add'l Duty of Sec. Of State/AB (Goodwin)**

House Bill 319 amends **G.S. 147-36, Duties of Secretary of State**, to add to the list of the Secretary's duties the application and acceptance of federal and private grants to effectuate the purposes of the Nonprofit Corporation Act and aid in the development of nonprofit corporations. The Secretary must comply with the terms of the grants and act in accordance with the Executive Budget Act. The Executive Budget Act requires State agencies to report the expenditure of federal funds in the same manner as State funds.

House Bill 319 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 319 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO APPLY FOR AND ACCEPT GRANT FUNDS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **March 17, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Linda Poe	508
Bernard Allen	509
John Easton	DOA PTC
Kate McAuliffe	NCCNP
Laura DeVan	DENR
Larry Hall	Office of Juvenile Justice
Mary Pearson	Capitol Group

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes

March 24, 1999

The House Committee on Ways & Means met on Wednesday, March 24, 1999 at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Bill Owens to explain **HB 253** which he sponsored.

HB 253 (SIPS Name Change/AB) ***Summary attached as Attachment I.***

Rep. Owens said that this bill simply changes the name of the State Information Processing Services to the Division of Information Technology Services.

Rep. Blue wondered about the Y2K requirements. Rep. Gene McCombs moved to amend the bill and his amendment was adopted. He then moved for the amendment and bill to be made into a committee substitute, give the Committee Substitute a favorable report, the original bill an unfavorable report. The motion passed.

HB 239 (Community College Property Transfers) was next on the agenda. ***Summary attached as Attachmentt II***. Rep. Haire was recognized to explain the bill.

He said HB 239 authorizes counties to acquire real or personal property and transfer the property to a community college within the county for use by the college. A county may only exercise its authority under this section upon the request of the board of trustees of the community college.

The effect of these changes is to allow certain installment financing to be used for community college construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of finance is available to counties but is not generally available to community colleges. One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

Rep. Owens moved for a favorable report, however, considerable discussion followed.

Rep. Blue was concerned that the bill would enable counties to do the things that are now happening a the Centennial Campus and wanted clarification regarding certificates of participation.

Rep. Nesbitt responded that the State Treasurer would need to do certificates of participation, but these do not require a vote of the people.

Rep. Cox introduced Dr. Marvin Joyner from Lee County Community College who explained that presently, to transfer property, the Colleges have to get permission from the General Assembly. This is easy to do when the Legislature is in session, but difficult at other times.

The bill was temporarily displaced.

HB 326 (Aquarium Exhibit Disposal) was again before the Committee. Rep. Culpepper presented a committee substitute to the committee and Rep. Haire moved that it be adopted. The motion passed. Rep. Gibson moved to give the Committee Substitute a favorable report, the original bill an unfavorable report. The motion passed.

HB 327(Food/Vending at NC Aquariums) was before the Committee. A Committee Substitute was presented and Rep. Blue moved that it be adopted. The motion passed.

Rep. Haire moved to amend the bill and his motion passed.

Rep. Owens moved to incorporate the amendment and the committee substitute bill into a new committee substitute bill, to get the committee substitute bill a favorable report, original bill and unfavorable report. His motion passed.

The Committee adjourned at 10:55 a.m.

Rep. Martin Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE ON WAYS AND MEANS
March 24, 1999

Agenda

10:00 a.m. Call Meeting to Order
Opening remarks by Chairman, Rep. Nesbitt

Bills to be considered:

HB 239 Community College Property Transfers

HB 253 SIPS Name Change

HB 326 Aquarium Exhibit Disposal

HB 327 Food/Vending at NC Aquariums

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 253

Short Title: SIPS Name Change/AB. (Public)

Sponsors: Representatives Owens; Alexander and Wainwright.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE NAME OF THE STATE INFORMATION PROCESSING SERVICE TO THE DIVISION OF INFORMATION TECHNOLOGY SERVICES.

The General Assembly of North Carolina enacts:

Section 1. The name of the State Information Processing Service of the Department of Commerce is changed to the Division of Information Technology Services.

Section 2. G.S. 143B-474.44 reads as rewritten:

"**§ 143B-472.44.** ~~**State Information Processing Services.**~~ **Division of Information Technology Services.**

With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the Department of Commerce shall have the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;

(2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;

(3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Department of Commerce ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;

(4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network;

(5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this subdivision to facilitate more efficient and economic use of information technology in these departments; and

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

(7) To provide cities, counties, and other local governmental units with access to ~~State Information Processing Services~~ Division of Information Technology Services information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

The Department of Revenue is authorized to deviate from this subsection's requirements that departments or agencies consolidate information processing functions on equipment owned, controlled or under custody of the ~~State Information Processing Services.~~ Division of Information Technology Services. All deviations from this subsection's requirements shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding. The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the ~~State Information Processing Services~~ Division of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the ~~State Information Processing Services~~ Division of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the Secretary of Commerce have been designed and installed and are fully operational. Nothing in this subsection may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-64.6, 147-64.7, or 143B-472.42(1). Notwithstanding any other provision of law, the Department of Commerce shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission."

Section 3. G.S. 143B-474.41(8) reads as rewritten:

"(8) The Chair of the ~~State Information Processing Services~~ Division of Information Technology Services Advisory Board."

Section 4. G.S. 143B-474.42(1) reads as rewritten:

"(1) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the Secretary of Commerce may in cooperation with affected State agency heads, do such of the following things as the Secretary of Commerce deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

1. Central telephone systems and telephone networks;
2. Teleprocessing systems;
3. Teletype and facsimile services;
4. Satellite services;
5. Closed-circuit TV systems;
6. Two-way radio systems;
7. Microwave systems;

8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the ~~State Information Processing Services~~ Division of Information Technology Services training to users within State agencies in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department."

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

Attachment I

HOUSE BILL 253:
SIPS Name Change/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Owens
Date:	March 24, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 253 changes the name of the State Information Processing Services to the Division of Information Technology Services.

BACKGROUND: S.L. 1997-148 transferred the State Information Processing Services (SIPS) from the Office of the State Controller to the Department of Commerce. The Department of Commerce reorganized the State Information Processing Services and renamed it the Division of Information Technology Services. House Bill 253 conforms statutory and session law references to the new name.

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

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the commission shall be compensated at the rate specified in G.S. 138-5."

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

In the General Assembly read three times and ratified this the 26th day of May, 1997.

Became law upon approval of the Governor at 4:20 p.m. on the 4th day of June, 1997.

S.B. 869 **CHAPTER 148**

AN ACT TO TRANSFER TECHNOLOGY-RELATED FUNCTIONS OF STATE GOVERNMENT TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

Section 1. (a) The following agencies, including all functions, powers, and duties of each, are transferred from the Office of State Controller to the Department of Commerce:

(1) Information Resource Management Commission.

(2) State Information Processing Services.

(3) State Telecommunications Services.

(b) Budgetary responsibilities for the agencies and services listed in subsection (a) of this section are transferred from the Office of State Controller to the Department of Commerce. The positions, funds, equipment, supplies, records, and other property to support the functions transferred by this section are also transferred from the Office of State Controller to the Department of Commerce. Any disputes arising out of this transfer shall be resolved by the Director of the Budget.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill ~~327~~ 253

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

H253-ASB-001.01

Date March 24 ,1999

Comm. Sub. [NO]
Amends Title [YES]
FIRST EDITION

Representative _____

moves to amend the bill on page 1, line 3,
by deleting the word "SERVICE" and substituting the word "SERVICES";

on page 1, line 6,
by deleting the word "Service" and substituting the word "Services";

on page 1, line 9,
by deleting "G.S. 143B-474.44" and substituting "G.S. 143B-472.44";

on page 3, line 23,
by deleting "G.S. 143B-474.41(8)" and substituting
"G.S. 143B-472.41(8)"; and

on page 3, line 26,
by deleting "G.S. 143B-474.42(1)" and substituting
"G.S. 143B-472.42(1)".

SIGNED Gene McCombs
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 239

Short Title: Community College Property Transfers/AB. (Public)

Sponsors: Representatives Haire, Tolson (Primary Sponsors); Wainwright, Morris, and Russell.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW PROPERTY TRANSFERS BETWEEN COMMUNITY COLLEGE BOARDS OF TRUSTEES AND COUNTIES FOR COMMUNITY COLLEGE PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-158.2. Acquisition and improvement of community college property.**

(a) Acquisition. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a community college within the county. In exercising the power of eminent domain, a county shall use the procedures of Chapter 40A of the General Statutes.

(b) Construction; Disposition. -- A county may construct, equip, expand, improve, renovate, repair, or otherwise make available property for use by a community college within the county and may lease, sell, or otherwise dispose of property for use by a community college within the county for any price and on any terms negotiated by the board of county commissioners and the board of trustees of the community college.

(c) Public Hearing. -- A county may use its authority under this section to acquire an interest in real or personal property for use by a community college within the county only upon request of the board of trustees of the community college for which property is to be made available. The board of county commissioners shall hold a

public hearing prior to final action. A notice of the public hearing shall be published at least once at least 10 days before the date fixed for the hearing."

Section 2. Article 2 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-15.1. Disposition, acquisition, and construction of property by community college.**

(a) Disposition. -- Notwithstanding the provisions of G.S. 115D-14, 115D-15, and 160A-274, the board of trustees of a community college may, in connection with additions, improvements, renovations, or repairs to all or part of the property, lease, sell, or otherwise dispose of any of its property to the county in which the property is located for any price and on any terms negotiated between the two boards. The agreement shall require the county to transfer the property back to the community college after the additions, improvements, renovations, and repairs are completed.

(b) Acquisition and Construction. -- Notwithstanding the provisions of G.S. 115D-14 and G.S. 115D-20(3), the board of trustees of a community college may acquire, by any lawful method, any interest in real or personal property for use by the board of trustees from the county in which the community college is located and may contract for the construction, equipping, expansion, improvement, renovation, repair, or otherwise making available for use by the board of trustees of all or part of the property upon any terms negotiated by the two boards.

(c) Approval. -- The actions of a board of trustees of a community college taken pursuant to this section are subject to the approval of the State Board of Community Colleges to the extent this approval is required by law.

(d) Contract Responsibility. -- A county's obligations under a contract entered into by the county on behalf of a community college within the county shall be the responsibility of the county and not the responsibility of the board of trustees of the community college."

Section 3. This act is effective when it becomes law, and applies to contracts entered into on or after that date.

Attachment II

HOUSE BILL 239:
Community College Transfers/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representatives Haire and Tolson
Date:	March 24, 1999		
Version:	First Edition	**Summary by:**	Tim Hovis Committee Counsel

SUMMARY: House Bill 239 authorizes counties to acquire real or personal property and transfer the property to a community college within the county for use by the college. A county may only exercise its authority under this section upon the request of the board of trustees of the community college.

Gaston, Green, Halifax, Harnett, Montgomery, Nash, Sampson, and Wilson Counties currently have this authority.

BILL ANALYSIS: The bill makes the following changes concerning the acquisition and financing of community college facilities:

(1) It authorizes counties to acquire real or personal property for use by a community college within the county when requested to do so by the board of trustees for the college and after a public hearing is held on the issue. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a community college is not an agency of the county.

(2) It authorizes the community colleges' boards of trustees to contract with the county for the erection, improvement, renovation, or repair of buildings located on property owned by the county. Under current general law (G.S. 115D-14), local boards of trustees of community colleges are required to hold title to all community college property that was donated to the college or acquired with tax revenue.

(3) It authorizes the community college's board of trustees to transfer to the county property on which a community college building in need of renovation or repair is located for any price agreed to by the board of trustees and the county. Current law (G.S. 115D-15) requires transfers from a board of trustees to a county to be at fair market value.

BACKGROUND: The effect of these changes is to allow certain installment financing to be used for community college construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of financing is available to counties but is not generally available to community colleges. One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

This summary was contributed to by Ms. Cindy Avrette

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 326
PROPOSED COMMITTEE SUBSTITUTE H326-CSSB-003
15:32:46 EZT / 23-MAR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Aquarium Exhibit Disposal/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DIVISION OF NORTH CAROLINA AQUARIUMS TO DISPOSE OF EXHIBITS FROM THE COLLECTIONS OF THE NORTH CAROLINA AQUARIUMS IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES FOR ACCREDITED ZOOS AND AQUARIUMS, TO REQUIRE THAT THE NET PROCEEDS OF ANY SALE OR LEASE OF EXHIBITS BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND, AND TO REQUIRE THE DIVISION OF NORTH CAROLINA AQUARIUMS TO REPORT ON RECEIPTS OF AND EXPENDITURES FROM THE NORTH CAROLINA AQUARIUMS FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-289.41(a) is amended by adding a new subdivision to read:

"(1c) Notwithstanding Article 3A of Chapter 143 of the General Statutes, and G.S. 143-49(4), dispose of any exhibit, exhibit component, or object from the collections of the North Carolina Aquariums by sale, lease, or trade. A sale, lease, or trade under this subdivision shall be conducted in accordance with generally accepted practices for zoos and

aquariums that are accredited by the American Association of Zoos and Aquariums. After deducting the expenses attributable to the sale or lease, the net proceeds of any sale or lease shall be credited to the North Carolina Aquariums Fund."

Section 2. G.S. 143B-289.44 is amended by adding a new subsection to read:

"(d) The Division of North Carolina Aquariums shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division by September 30 of each year a report on the North Carolina Aquariums Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

Section 3. The first report required by G.S. 143B-289.44(d), as enacted by Section 2 of this act, shall be due on September 30, 2000.

Section 4. Sections 1 and 4 of this act are effective when this act becomes law. Sections 2 and 3 of this act become effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H327-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 327
THIS IS A DRAFT 23-MAR-99 16:33:30
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Food/Vending at NC Aquariums/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF NORTH CAROLINA AQUARIUMS, RATHER THAN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO OPERATE OR CONTRACT FOR FOOD AND VENDING SERVICES AT THE NORTH CAROLINA AQUARIUMS, AND TO REQUIRE THE NET PROCEEDS OF THESE FOOD AND VENDING SERVICES TO BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 111-42 reads as rewritten:

"**§ 111-42. Definitions as used in this Article.**

(1) 'Automatic vending' means a coin, currency, token, ticket, or credit card operated machine that dispenses food, drinks, or sundries.

~~(a)~~ (2) 'Regular vending facility' means a vending facility where food preparation or cooking is not done on the State property.

~~(b)~~ (3) 'State agency' means department, commission, agency or instrumentality of the State.

~~(c)~~ (4) 'State property or State building' means building and land owned, leased, or otherwise controlled by the State,

exclusive of schools, colleges and universities, the North Carolina State Fair, the North Carolina Aquariums, and the State Legislative Building.

~~(d)~~ (5) 'Vending facility' includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

~~(e)~~ (6) 'Visually handicapped' means a person who is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential and who is registered pursuant to G.S. 111-4."

Section 2. G.S. 111-43 reads as rewritten:

"**§ 111-43. Installation of ~~coin-operated~~ automatic vending machines.**

(a) In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, ~~coin-operated~~ automatic vending machines for the location. Profits from ~~coin-operated~~ automatic vending machines secured by the Department shall be used by the Department for the support of programs that enable blind people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind.

(b) Notwithstanding the provisions of G.S. 111-42(4), the North Carolina Aquariums shall not operate or secure a contract for the operation of automatic vending machines unless the Department fails or refuses to secure a contract for automatic vending machines pursuant to subsection (a) of this section."

Section 3. G.S. 111-45 reads as rewritten:

"**§111-45. Duty of State agency to inform Department.**

It shall be the duty of the State agencies to inform the Department of existing and prospective locations for vending facilities and ~~coin-operated~~ automatic vending machines and to prescribe regulations (upon request of the Department) to promote the successful operation of the vending facilities of the visually handicapped."

Section 4. G.S. 11-47 reads as rewritten:

"**§ 111-47. Exclusions.**

(a) This Article is not intended to cover food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees, or otherwise institutionalized persons, nor to cover coin-operated vending machines located in State facilities operated under the authority of G.S. 122C.

(b) This Article shall not prohibit the continued use of ~~coin-operated~~ automatic vending machines currently the property of the Division of Services for the Blind of the Department of Health and Human Services and now part of the vending-stand program."

Section 2. Part 5C of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-289.45. Proceeds from food and vending services.**

The net proceeds of revenue generated by food and vending services that are provided at the North Carolina Aquariums and are operated by or whose operation is contracted for by the Division of North Carolina Aquariums shall be deposited in the North Carolina Aquariums Fund."

Section 3. This act shall not be construed to alter any contract for food and vending services at the North Carolina Aquariums that is in force at the time this act becomes law.

Section 4. This act becomes effective July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 327 DATE 3-24-99

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

COMMITTEE SUBSTITUTE _____

Rep.) Haire
)
Sen.)

moves to amend the bill on page 3, line 12

( ) WHICH CHANGES THE TITLE

by deleting "2." and substituting "5."; p. 3,

and on line 20, by deleting "3." and substituting "6.";

and on p. 3, line 23, by deleting "4." and substituting "7."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☐ Committee Substitute for
H.B. 253 A BILL TO BE ENTITLED AN ACT TO CHANGE THE NAME OF THE STATE INFORMATION PROCESSING SERVICE TO THE DIVISION OF INFORMATION TECHNOLOGY SERVICES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 326 A BILL TO BE ENTITLED AN ACT TO ALLOW THE DIVISION OF NORTH CAROLINA AQUARIUMS TO DISPOSE OF EXHIBITS FROM THE COLLECTIONS OF THE NORTH CAROLINA AQUARIUMS IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES FOR ACCREDITED ZOOS AND AQUARIUMS AND TO REQUIRE THAT THE NET PROCEEDS OF ANY SALE OR LEASE OF EXHIBITS BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 327 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF NORTH CAROLINA AQUARIUMS, RATHER THAN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO OPERATE OR CONTRACT FOR FOOD AND VENDING SERVICES AT THE NORTH CAROLINA AQUARIUMS, AND TO REQUIRE THE NET PROCEEDS OF THESE FOOD AND VENDING SERVICES TO BE CREDITED TO THE NORTH CAROLINA AQUARIUMS FUND.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ House amendment (s).
_____ House committee substitute.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

VISITOR REGISTRATION SHEET

WAYS & MEANS 3/17/99 10:00 am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	James L. Ashley	NC Dept. of Admin.
2.	Rhett White	NC Aquariums
3.	John Foster	DSC
4.	Denny McGuire	NC Commerce - ITS
5.	Hal Miller	NCACCT
6.	Ken Byrd	DCC
7.	Hal Miller	DCC
8.	[illegible]	DCC
9.	Johan Cyrus	NC State Energy
10.	Kim Hibbard	NCLM
11.	[illegible]	[illegible]
12.	Bob Slocum	NC Forestry Assoc.
13.	Paul Fabian	Cote of Hickory
14.	Kevin Howell	Cowan Office
15.	Jason W. Moore	Bone & Associates
16.	David Simmons	ZPA, PA
17.	B Simmons	NC Equity
18.	Nancy Mueller	LWV-CHA
19.	Andy Romanet	N.C. L.M.
20.		
21.		

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes

March 31, 1999
10:00 a.m.

The House Committee on Ways and Means met on Wednesday, March 31, 1999 at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Phil Haire to explain **HB 239 (Community College Property Transfers)** of which he was primary sponsor.

Rep. Haire presented a proposed committee substitute to the Committee and it was adopted.

Tim Hovis explained the bill and the changes made by the committee substitute.

Rep. Mickey Michaux wondered if this bill pertained to real or to personal property and was told that it could pertain to both. Rep. Mary Jarrell wondered how a county can acquire personal property. Rep. Michaux moved to amend the committee substitute bill on page 1, line 13 by deleting the word "domain" and substituting the words "domain for real property." His motion passed. Rep. Bill Owens advised the committee that real estate sometime included things like refrigerators and other appliances and that some people might donate these appliances for tax purposes.

Committee discussion ensued. Rep. Neely offered the committee a explanation of real and personal property. Real property is land or anything attached to property while personal property is something movable.

Rep. Buchanan moved to have the amendment and committee substitute bill made into a new committee substitute bill and be given a favorable report and re-referred to the Committee on Finance, the original bill unfavorable. His motion passed.

Rep. David Redwine was recognized to explain **HB 275 (Zero ESC Tax Rate for More/AB)**. He explained that HB 275 would grant a zero unemployment rate to employers with a credit ratio of 4% or greater. Under current law, those employers with a 5% or greater credit ratio pay the zero unemployment insurance tax rate.

Committee discussion followed. Parker Chessom, Chairman of the Employment Security Commission and David Clegg, Director of Governmental Relations from the ESC were recognized and spoke in favor of the bill.

Rep. Redwine proposed to amend the bill by changing the effective date and his motion passed. He then moved to have the bill as amended incorporated into a committee substitute, given a favorable report and re-referred to the Committee on Finance and to give the original bill an unfavorable report. His motion passed.

Rep. Redwine was then recognized to explain **HB 277 ("Family Friendly" UI Exception)**. He presented a committee substitute for adoption and his motion passed. He explained that HB 277 provides that an individual will not be disqualified from eligibility for unemployment benefits if the individual is unable to accept employment during a particular shift due to lack of childcare or elder care.

Committee discussion followed. Reps. Starnes and Decker were concerned that there was a great potential for abuse. Rep. Fox moved to amend the bill and his motion passed. Tom Whittaker from the ESC was recognized. He explained that this would only apply to those working on a second shift and it would only apply to workers who were moved to another shift.

Rep. Nesbitt announced that the bill would be carried over to the next meeting and the committee adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chair

Janette W. Lee, Committee Assistant

Attachment 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H239-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 239
THIS IS A DRAFT 31-MAR-99 08:25:30
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Community College Property Transfers/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING PROPERTY TRANSFERS BETWEEN COMMUNITY COLLEGE BOARDS OF TRUSTEES AND COUNTIES FOR COMMUNITY COLLEGE PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-158.2. Acquisition and improvement of community college property.

(a) Acquisition. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a community college within the county. In exercising the power of eminent domain, a county shall use the procedures of Chapter 40A of the General Statutes.

(b) Construction; Disposition. -- A county may construct, equip, expand, improve, renovate, repair, or otherwise make available property for use by a community college within the county and may lease, sell, or otherwise dispose of property for use by a community college within the county for any price and on

any terms negotiated by the board of county commissioners and the board of trustees of the community college.

(c) Public Hearing. -- A county may use its authority under this section to acquire an interest in real or personal property for use by a community college within the county only upon request of the board of trustees of the community college for which property is to be made available. The board of county commissioners shall hold a public hearing prior to final action. A notice of the public hearing shall be published at least once at least 10 days before the date fixed for the hearing."

Section 2. Article 2 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"§ 115D-15.1. Disposition, acquisition, and construction of property by community college.

(a) Disposition. -- Notwithstanding the provisions of G.S. 115D-14, 115D-15, and 160A-274, the board of trustees of a community college may, in connection with additions, improvements, renovations, or repairs to all or part of its property, lease, sell, or otherwise dispose of any of its property to the county in which the property is located for any price and on any terms negotiated between the board of trustees of the community college and the board of county commissioners.

(b) Transfer. -- An agreement under subsection (a) of this section shall require the county to transfer the property back to the board of trustees of the community college when any financing agreement entered into by the county to finance the additions, improvements, renovations and repairs has been satisfied. If the county did not enter into a financing agreement, the agreement under subsection (a) of this section shall require the county to transfer the property back to the board of trustees of the community college upon the completion of the additions, improvements, renovations, and repairs.

(c) Acquisition and Construction. -- Notwithstanding the provisions of G.S. 115D-14 and G.S. 115D-20(3), the board of trustees of a community college may acquire, by any lawful method, any interest in real or personal property from the county in which the community college is located for use by the board of trustees and may contract for the construction, equipping, expansion, improvement, renovation, repair, or otherwise making available for use by the board of trustees of the community college of all or part of the property upon any terms negotiated between the board of trustees of the community college and the board of county commissioners.

(d) Approval. -- The actions of a board of trustees of a community college taken pursuant to this section are subject to the approval of the State Board of Community Colleges.

(e) Contract Responsibility. -- A county's obligations under a financing contract entered into by the county to finance improvements to real or personal property pursuant to this section shall be the responsibility of the county and not the responsibility of the board of trustees of the community college."

Section 3. The following laws are repealed:

(1) Chapter 613 of the 1993 Session Laws

(2) Section 3 of Chapter 154 of the 1995 Session Laws

(3) Sections 1, 2, 3, and 4 of Chapter 399 of the 1995 Session Laws

(4) Chapter 706 of the 1995 Session Laws

(5) Chapter 42 of the 1997 Session Laws.

Section 4. Section 3 of this act is effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date. The remainder of this act is effective when it becomes law, and applies to agreements entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 239 DATE 3-31-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Michaux
Sen.)

1 moves to amend the bill on page 1, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "domain," and
4 substituting the words "domain ~~s~~ for real
5 property,".
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 275

Short Title: Zero ESC Tax Rate for More/AB. (Public)

Sponsors: Representative Redwine.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A ZERO UNEMPLOYMENT INSURANCE TAX RATE FOR MORE EMPLOYERS WITH POSITIVE EXPERIENCE RATINGS, BEGINNING JANUARY 1999.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, ~~1995,~~ 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation

date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is: As Much As	But Less Than	Rate Schedules (%) A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
~~4.0%~~	~~4.2%~~	~~0.15%~~	~~0.10%~~	~~0.09%~~	~~0.08%~~	~~0.07%~~	~~0.06%~~	~~0.05%~~	~~0.04%~~	~~0.03%~~
~~4.2%~~	~~4.4%~~	~~0.10%~~	~~0.09%~~	~~0.08%~~	~~0.07%~~	~~0.06%~~	~~0.05%~~	~~0.04%~~	~~0.03%~~	~~0.02%~~
~~4.4%~~	~~4.6%~~	~~0.09%~~	~~0.08%~~	~~0.07%~~	~~0.06%~~	~~0.05%~~	~~0.04%~~	~~0.03%~~	~~0.02%~~	~~0.01%~~
~~4.6%~~	~~4.8%~~	~~0.08%~~	~~0.07%~~	~~0.06%~~	~~0.05%~~	~~0.04%~~	~~0.03%~~	~~0.02%~~	~~0.01%~~	~~0.01%~~
~~4.8%~~	~~5.0%~~	~~0.07%~~	~~0.06%~~	~~0.05%~~	~~0.04%~~	~~0.03%~~	~~0.02%~~	~~0.01%~~	~~0.01%~~	~~0.01%~~
~~5.0%~~										
4.0% & OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

"

Section 2. This act is effective with respect to calendar quarters beginning on or after January 1, 1999.

HOUSE BILL 275:
Zero ESC Tax Rate for More/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Redwine
Date:	March 31, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 275 would grant a zero unemployment insurance tax rate to employers with a credit ratio of 4% or greater.

CURRENT LAW: Under current law, those employers with a 5% or greater credit ratio pay the zero unemployment insurance tax rate.

BILL ANALYSIS: House Bill 275 would grant a zero unemployment insurance tax rate to employers with a credit ratio of 4% or greater rather than the credit ratio of 5% or greater required by current law. The credit ratio is the ratio of an employer's credit balance in the Unemployment Insurance Fund relative to the employer's payroll. The higher the credit ratio, the greater the amount of an employer's credit balance in the Unemployment Insurance Fund relative to the employer's payroll. By lowering the threshold for the zero unemployment insurance tax rate from 5% to 4%, House Bill 275 would make the zero unemployment insurance tax rate available to more employers.

EFFECTIVE DATE: House Bill 275 is effective with respect to calendar quarters beginning on or after January 1, 1999.

Mary Shuping, Research Division, and Richard Bostic, Fiscal Research Division, contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 275 (First Edition) Zero ESC Rate for More

SHORT TITLE: Zero ESC Rate for More/AB

SPONSOR(S): Representative Redwine

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Unemployment Insurance Trust Fund	($778,000)	($1,012,000)	($1,219,000)	($1,321,000)	($1,410,000)
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Employment Security Commission (ESC)

EFFECTIVE DATE: The act is effective with respect to calendar quarters beginning on or after January 1, 1999.

BILL SUMMARY: The bill will grant a zero unemployment insurance tax rate to employers with a credit ratio of 4% or greater. Currently, those employers with a 5% or greater credit ratio pay the zero tax rate.

ASSUMPTIONS AND METHODOLOGY:
As of January 31, 1999, the balance in the Unemployment Insurance Trust Fund stood at $1,257,077,160. Due to the Fund's solvency and North Carolina's low unemployment rate, the Employment Security Commission (ESC) recommends a zero tax rate for an additional group of employers with a credit ratio. A credit ratio means that an employer has paid in more money to the Unemployment Insurance Trust Fund than has been deducted from its account for UI benefits paid to employees. ESC estimates that this bill will reduce unemployment insurance taxes for 10,000 employers with a 4% credit ratio in 1999. With an additional 6,400 employers reaching

the 4% credit ratio each year, ESC estimates that 32,000 employers will benefit from this zero tax rate by 2003.

TECHNICAL CONSIDERATIONS: To be effective for the first quarter of 1999, the bill would need to be enacted by April 9, 1999.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington 

DATE: Wednesday, March 24, 1999

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 275

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H275-ASB-001.01

Date 3-31 ,1999

Comm. Sub. [NO]
Amends Title [NO]
FIRST EDITION

Representative Redwine

1 moves to amend the bill on page 2, line 42,
2 by deleting "January 1, 1999." and substituting "April 1, 1999.".

SIGNED _____
Amendment Sponsor

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

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 277
PROPOSED COMMITTEE SUBSTITUTE H277-CSSB-001
09:08:54 EZT / 31-MAR-99

ATTENTION: Line numbers may change after adoption.

Short Title: "Family Friendly" UI Exception. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT AN INDIVIDUAL MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT INSURANCE BENEFITS WHEN THE INDIVIDUAL'S INABILITY TO ACCEPT BONA FIDE PERMANENT EMPLOYMENT DURING A PARTICULAR SHIFT WOULD RESULT IN AN UNDUE FAMILY HARDSHIP AND TO PROVIDE THAT AN INDIVIDUAL MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT INSURANCE BENEFITS WHEN THE INDIVIDUAL'S DISCHARGE IS THE RESULT OF AN UNDUE FAMILY HARDSHIP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(10a) 'Undue family hardship' arises when an individual is unable to obtain during a particular shift (i) child care during that shift for a minor child under 14 years of age who is in the legally recognized custody of the individual or (ii) elder care during that shift for an aged and disabled parent of the individual."

Section 2. G.S. 96-8(24) reads as rewritten:

"(24) Work, for purposes of this Chapter, means any bona fide permanent ~~employment.~~ employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, 'bona fide permanent employment' is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the Commission, either on its own motion or upon a clear and convincing showing by an interested party that the application of the presumption would work a substantial injustice in view of the intent of this Chapter; (b) Any decision of the Commission on the question of bona fide employment may be disturbed on judicial review only upon a finding of plain error."

Section 3. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the

extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); ~~or~~ (vi) separation due to leaving for disability or health condition shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the ~~Commission.~~ Commission, or (vii) separation of claimant solely as the result of an undue family hardship as defined in G.S. 96-8(10a), shall not be charged to the account of the employer.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S.

96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 4. G.S. 96-14 is amended by adding a new subdivision to read:

"(1g) For purposes of this Chapter, separation or discharge of a claimant solely as a result of an undue family hardship as defined in G.S. 96-8(10a) shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer."

Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date.

HOUSE BILL 277:
"Family Friendly" UI Exception/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Redwine
Date:	March 31, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 277 provides that an individual will not be disqualified from eligibility for unemployment benefits if the individual is unable to accept employment during a particular shift due lack of child care or elder care.

CURRENT LAW: Under G.S. 96-13(a)(1), an individual is eligible for unemployment benefits only if the Employment Security Commission (ESC) finds that the individual is actively seeking work. The current definition of "work" under G.S. 96-8(24) makes no provision for individuals who are unable to accept employment during a particular shift due to lack of child care or elder care. Thus, under current law, an individual could be denied unemployment benefits for failing to accept employment during a particular shift, even if accepting the employment would create a hardship due to lack or child care or elder care.

BILL ANALYSIS: House Bill 277 excludes from the definition of "work" employment that would result in an undue family hardship. House Bill 277 provides that an undue family hardship arises when an individual is unable to accept employment during a particular shift due to the individual's inability to obtain care during the offered shift for: (i) a minor child under 14 years of age who is in the legally recognized custody of the individual or (ii) an aged and disabled parent of the individual. Under House Bill 277, the ESC could find that an individual is actively seeking work even if the individual has failed to accept employment during a particular shift due to lack of child care or elder care.

House Bill 277 also provides that separation from employment of an individual due to the individual's inability to work during a particular shift due to an undue family hardship shall not be charged to the Unemployment Insurance Fund account of the employer.

EFFECTIVE DATE: House Bill 277 becomes effective July 1, 1999 and applies to unemployment insurance claims filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 277 DATE 3-31-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 277

Rep.)
) Fox
Sen.)

1 moves to amend the bill on page 1, line 19

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "and" and

4 substituting the word "or"

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☐ Committee Substitute for
H.B. 239 A BILL TO BE ENTITLED AN ACT TO ALLOW PROPERTY TRANSFERS BETWEEN COMMUNITY COLLEGE BOARDS OF TRUSTEES AND COUNTIES FOR COMMUNITY COLLEGE PURPOSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 275 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A ZERO UNEMPLOYMENT INSURANCE RATE FOR MORE EMPLOYERS WITH POSITIVE EXPERIENCE RATINGS, BEGINNING JANUARY 1999.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

Ways & Means — 3-31-99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
C. Medlin	Covenant w/ NC's Children
T. Tash	The Pilot
S. Howard	DOT - DMV
Kim Hibbard	NCLM
B Summers	NC Equity
[illegible]	Justice Center
Clay Hines	Community Colleges
Richard Whitehurst	UTU
[illegible]	NC State AFL-CIO
Paul Wilms	NCAHB.A
John May	NC CWA council
James Andrews	NC State AFL-CIO
Jon Carr	Jordan Price law firm
Barker Clemm	ESC
[illegible]	ESC
Tom Whitaker	ESC
[illegible]	NCCS
Kyle McBride	NSTA
Hal Miller	NCACCT
[illegible]	UNC
[illegible]	NC Council of Churches

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Chris Parker	CAPA
Soren Schmidt	AJC Justice Center
Patricia Reuben	NCAEC
Alan Miller	Bailey & Brown LLP

House Committee
on
Ways and Means

Minutes
April 7, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, April 7, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and made opening remarks.

HB 276 (Omnibus ESC Changes) sponsored by Rep. Redwine was before the committee. Parker Chessoms and David Clegg from the Employment Security Commission were recognized to speak on the bill.

David Clegg said the bill did the following:

- **Section 1** authorizes employers to pay their unemployment insurance taxes by electronic transfer. Section 1 also authorizes the Employment Security Commission (ESC) to establish a procedure by which unemployment taxes may be payable by credit card.

- **Section 2** requires employers with 100 or more employees, rather than the current 250 or more employees, to file their Employer's Quarterly Tax and Wage Report on magnetic tapes or diskettes.

- **Section 3** cross references the standard beginning rate of contribution set out in G.S. 96-9(b)(1) as the beginning contribution rate for a transferring employer.

- **Section 4** and **5** amend the extended benefits statute so that it complies with the federal requirement that an individual must have had 20 weeks of full-time insured employment in order to be eligible for extended unemployment insurance benefits.

- **Section 6** provides that in cases of partial unemployment, employers may file claims for employees through automation.

- **Section 7** provides 10 days, rather than 10 working days, to file a written appeal of an adjudication or protest a claim. Section 7 also provides 45 days rather than 20 working days, during which the Commission may raise an issue as to the eligibility or disqualification of a claimant.

- **Section 8** expands the information from North Carolina income tax forms that may be furnished to the ESC for its NC WORKS study of the working poor.

- **Section 9** directs the Chairman of the ESC to appoint the members of the county Job Service Employer Committees. Section 9 also directs the ESC to adopt rules and regulations for the meetings of each Job Service Employer Committee.

- **Section 10** repeals the test for qualifying wages for second year benefits found in G.S. 96-12(b)(4).

- **Section 11** makes Sections 3, 7, and 10 of this act effective July 1, 1999, and provides that Sections 7 and 10 apply only to unemployment insurance claims filed on or after July 1, 1999. All other sections of this act are effective when the act becomes law.

Upon completion of his remarks, discussion followed.

Rep. Michaux was concerned about Section 7 and proposed to amend the bill. He and Rep. Bowie also had concerns about names being mentioned in the NC WORKS program.

Rep. Eddins wanted to know more about the NC WORKS program was and was told that it was a part of the welfare reform legislation passed last year. It used to be called the study of the working poor.

Rep. Mosely moved to amend the bill and her motion passed.

Discussion continued. The Chairman said the bill would be carried over to the next meeting and instructed the Committee Staff to prepare a bill incorporating all the amendments into a committee substitute and have that ready for the next meeting over the committee.

The meeting was adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 7, 1999
10:00 a.m.

10:00 Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 276 Omnibus ESC Changes (Redwine)

HB 277 "Family Friendly" UI Exception (Redwine)
Carried over from March 31st Meeting with the following Action:

Committee Substitute adopted. Rep. Owens moved to give the Committee Substitute a favorable report, original bill an unfavorable report. Amendment to the Committee Substitute Adopted.

HB 278 TANF Separation Noncharged (Redwine)

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 276

Short Title: Omnibus ESC Changes/AB. (Public)

Sponsors: Representative Redwine.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT MAKING VARIOUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(a) is amended by adding two new subdivisions to read:

"(10) Electronic Funds Transfer. -- Employers electing to do so may pay their quarterly tax contributions by 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 Commission 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). The Commission may waive this penalty for good cause shown. As used in this section, the term 'electronic funds transfer' means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(11) Credit Card Payment. -- The Commission may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Commission of the full amount of taxes, penalties, and interest due. The Commission shall require an employer who pays by credit card to include an amount equal to any fee charged the

Commission for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes."

Section 2. G.S. 96-9(a)(7) reads as rewritten:

"(7) Effective with the quarter ending September 30, 1992, every employer with 250 or more employees, and every person or organization that, as agent, reports wages on a total of 250 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Commission.

Effective with the quarter ending September 30, 1999, every employer with 100 or more employees, and every person or organization that, as agent, reports wages on a total of 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Commission.

For failure of an employer to comply with this subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars ($25.00). For failure of an agent to comply with this subdivision, the Commission may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Commission may reduce or waive a penalty for good cause shown."

Section 3. G.S. 96-9(c)(4)b. reads as rewritten:

"b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, ~~his~~ the successor's rate of contribution for the period from ~~such~~ that date to the end of the then current contribution year shall be the same as ~~his~~ the successor's rate in effect on the date of ~~such~~ the acquisition. If the successor was not an employer prior to the date of the acquisition of the ~~business he~~ business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which ~~he~~ the successor acquired the business of the predecessor; however, if ~~such~~ the successor makes application for the transfer of the account within 60 days after notification by the Commission

of ~~his~~ the right to do so and the account is transferred, or meets the requirements for mandatory transfer, ~~he~~ the successor shall be assigned for the remainder of ~~such~~ the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, ~~provided~~ as long as there was only one predecessor ~~or if more than one and~~ or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions ~~of two and seven-tenths percent (2.7%)~~ set forth in G.S. 96-9(b)(1) and shall continue to pay at ~~such rate until he~~ that rate until the transferring employer qualifies for a reduction, reacquires the account ~~he~~ transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3). ~~However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) and shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).~~"

Section 4. G.S. 96-12.01(b) reads as rewritten:

"(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. -- Except when the result would be inconsistent with ~~G.S. 96-12 or~~ the other provisions of this ~~section,~~ section and in matters of eligibility determination, as provided in the regulations of the Commission, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits."

Section 5. G.S. 96-12.01(c) is amended by adding a new subdivision to read:

"(5) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked

during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest."

Section 6. G.S. 96-15(a) reads as rewritten:

"(a) Filing. -- Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Employers may file claims for employees through the use of automation in the case of Partial Unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Commission may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Commission may direct. Such printed statements and other materials shall be supplied by the Commission to each employing unit without cost to the employing unit."

Section 7. G.S. 96-15(b)(2) reads as rewritten:

"(b) (2) Adjudication. -- When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 10 ~~working~~ days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 10 ~~working~~ days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the

question or issue raised. Provided further, no question or issue may be raised or presented by the Commission as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after ~~20 working~~ 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any of the provisions of G.S. 96-18."

Section 8. G.S. 105-259(b)(9a) reads as rewritten:

"(9a) To furnish information to the Employment Security Commission to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Employment Security Commission shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
b. Filing status and federal personal exemptions.
c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
e. Exemption for children, nonresidents, and part-year residents' exemption for children, credit for children.
f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

Section 9. G.S. 108A-29(q) reads as rewritten:

"(q) Each county Employment Security Commission local or branch office shall organize a Job Service Employer ~~Committee, based on the membership makeup of the Job Service Employer Committees in existence at the time this act becomes law.~~ Committee. The Chairman of the Employment Security Commission shall appoint the Job Service Employer Committee members, each of whom shall serve two-year

terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall adopt rules and regulations concerning the meeting schedule and the conduct of meetings of each Job Service Employer Committee. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Joint Legislative Public Assistance Commission by the end of each calendar year. ~~Counties having a Workforce Development Board may designate the Board to perform the duties described in this section rather than organizing a Job Service Employer Committee.~~"

Section 10. G.S. 96-12(b)(4) is repealed.

Section 11. Sections 3, 7, and 10 of this act become effective July 1, 1999, with Sections 7 and 10 applying to unemployment insurance claims filed on or after that date. The remainder of this act is effective when it becomes law.

Handout I

HOUSE BILL 276:
Omnibus ESC Changes/AB

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Redwine
Date:	March 31, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 276 makes various changes to Employment Security statutes in Chapter 96 of the General Statutes.

Section by Section Bill Summary:

- **Section 1** authorizes employers to pay their unemployment insurance taxes by electronic transfer. Section 1 also authorizes the Employment Security Commission (ESC) to establish a procedure by which unemployment taxes may be payable by credit card.
- **Section 2** requires employers with 100 or more employees, rather than the current 250 or more employees, to file their Employer's Quarterly Tax and Wage Reports on magnetic tapes or diskettes.
- **Section 3** cross references the standard beginning rate of contribution set out in G.S. 96-9(b)(1) as the beginning contribution rate for a transferring employer.
- **Section 4 and 5** amend the extended benefits statute so that it complies with the federal requirement that an individual must have had 20 weeks of full-time insured employment in order to be eligible for extended unemployment insurance benefits.
- **Section 6** provides that in cases of partial unemployment, employers may file claims for employees through automation.
- **Section 7** provides 10 days, rather than 10 working days, to file a written appeal of an adjudication or to protest a claim. Section 7 also provides 45 days, rather than 20 working days, during which the Commission may raise an issue as to the eligibility or disqualification of a claimant.
- **Section 8** expands the information from North Carolina income tax forms that may be furnished to the ESC for its NC WORKS study of the working poor.
- **Section 9** directs the Chairman of the ESC to appoint the members of the county Job Service Employer Committees. Section 9 also directs the ESC to adopt rules and regulations for the meetings of each Job Service Employer Committee.
- **Section 10** repeals the test for qualifying wages for second year benefits found in G.S. 96-12(b)(4).
- **Section 11** makes Sections 3, 7, and 10 of this act effective July 1, 1999, and provides that Sections 7 and 10 apply only to unemployment insurance claims filed on or after July 1, 1999. All other sections of this act are effective when the act becomes law.

Mary Shuping, Research Division, and Richard Bostic, Fiscal Research Division, contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 276

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

H276-ASB-001.01

Date_____,1999

Comm. Sub. [NO]
Amends Title [NO]
FIRST EDITION

Representative _____

moves to amend the bill on page 6, line 1,
by rewriting that line to read:
"terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall organize a State Job Service Employer Committee consisting of eight members who shall serve two-year terms. The Chairman of the Employment Security Commission shall appoint the State Job Service Employer Committee members after consultation with the Governor. The"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 276

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

H276-ASB-001.01

on page 6, line 14,
by rewriting that line to read:
"Section 10. G.S. 96-12(b)(4) reads as rewritten:
'(4) Qualifying Wages for Second Benefit Year. -- An individual whose prior benefit year has expired and who files a new benefit claim is not entitled to benefits unless the individual has been paid qualifying wages since the beginning date of the prior benefit year and before the date the new benefit claim was filed equal to at least ~~10 times the individual's weekly benefit amount under the new benefit claim.~~ six times the average weekly insured wage, obtained in accordance with G.S. 96-8(22), and has been paid wages in at least two quarters of the individual's base period. "Qualifying wages" are wages earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85.'".

SIGNED Jane Mosley
Amendment Sponsor

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

ADOPTED ✓ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Ways and Means 04/7/99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Brenda Summer	NC Equity
2.	Helen M Mary	NC Chd
3.	Mike Blum	NC State AFSCME
4.	Roslyn Sawyer	NC Child Care Coalition
5.	Lockhart Taylor	NC-ESC
6.	Audrey Heron	NC-ESC
7.	Wayne Dawes	Commerce
8.	George Lord	NC Council of Churches
9.	John Cyrus	n.c. State Grange
10.	[illegible]	NCDC
11.	Brenda Doughety	Sprint
12.	Mesk Helen Lipina	Meck Co. DSS
13.	Shannese Ransome	DSS
14.	Marlene Reiss	NC Center for Nonprofits
15.	Kate McGuire	NC Center for Nonprofits
16.	[illegible]	[illegible]
17.	Beryl E. Wade	OAH
18.	Bob Christenson	NADO
19.		
20.		
21.		

House Committee
on
Ways and Means

Minutes
April 14, 1999
10:00 a.m.

The House Ways & Means Committee met Wednesday, April 14, 1999 at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and announced that **HB 276 (Omnibus ESC Changes)** carried over from the Committee's April 7th meeting would be first on the agenda. Staff distributed a proposed committee substitute for adoption and Rep. Joni Bowie moved for its adoption. Her motion passed. In the absence of the bill sponsor, Rep. David Redwine, committee staff explained the Committee Substitute. Rep. Bowie moved to give the Committee Substitute a favorable report, unfavorable to original bill. Her motion passed.

Committee Substitute for HB 277 ("Family Friendly" UI Exception) was before the Committee having been carried over from the Committee's March 31st meeting. Rep. Redwine was recognized and he explained that the House committee Substitute amends the Employment Security laws to provide that an individual may not be disqualified for unemployment insurance benefits when the individual's inability to accept bona fide permanent employment during a particular shift would result in an undue family hardship. The bill also provides that an individual may not be disqualified for unemployment insurance benefits when the individual's discharge is solely due to an inability to accept work during a particular shift as the result of an undue family hardship.

Rep. Haire moved for adoption of the Committee Substitute bill and his motion passed. Rep. Redwine then proposed to amend the Committee Substitute to change the date of the sunset provision. His motion passed.

Leslie Bevacqua representing the NCCBI was recognized and said that her association supported the bill.

Discussion followed. Reps. Eddins and Decker were concerned about the potential for abuse.

David Clegg from the Employment Security Commission was recognized. He explained that the ESC would evaluate these hardship and he did not feel that there would be problems with abuse.

Rep. Buchanan said that years ago families just had one parent working, but not so today. He supported the bill.

Rep. Cox moved to incorporate the amendment and the committee substitute bill into a new committee substitute bill, give that bill a favorable report, the original bill an unfavorable report. The motion passed.

HB 330 (NC Workforce Development) was before the Committee and Rep. Owens was recognized to explain the bill. He said the bill would create the North Carolina Commission on Workforce Development, conform the general statutes to the Federal Workforce Investment Act and make other statutory changes to enhance workforce training and development.

Rep. Haire wondered if the bill would help people get off welfare. Rep. Redwine wondered where the money would come from and suggested that the bill may need to be re-referred to the Committee on Appropriations.

Rep. Michaux moved to give the bill a favorable report and to re-refer the bill to the Committee on Appropriations.

Consideration discussion followed and the bill was carried over.

The Committee adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 14, 1999
10:00 a.m.

10:00 Meeting called to order and
Opening remarks by **Rep. Martin Nesbitt, Chair**

Bills to be considered:

HB 330 N. C. Workforce Development **(Owens)**

HB 276 Omnibus ESC Changes **(Redwine)**
Carried over from April 7th Meeting

HB 277 "Family Friendly" UI Exception **(Redwine)**
Carried over from March 31st Meeting with the following Action:

Committee Substitute adopted. Rep. Owens moved to give the Committee Substitute a favorable report, original bill an unfavorable report. Amendment to the Committee Substitute Adopted.

HB 425 Driver's License Info Not For Sale **(Grady)**
HB 461 Release of DMV Information **(Redwine)**

ADJOURNMENT

#1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 276
PROPOSED COMMITTEE SUBSTITUTE H276-CSSB-001
18:08:34 EZT / 13-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Omnibus ESC Changes. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(11) Credit Card Payment. -- The Commission may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Commission of the full amount of taxes, penalties, and interest due. The Commission shall require an employer who pays by credit card to include an amount equal to any fee charged the Commission for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes."

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Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions ~~of two and seven-tenths percent (2.7%)~~ set forth in G.S. 96-9(b)(1) and shall continue to pay at ~~such rate until he~~ that rate until the transferring employer qualifies for a reduction, reacquires the account ~~he~~ transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

~~However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) and shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).~~"

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"(b) (2) Adjudication. -- When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within ~~10 working~~ 15 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~10 working~~ 15 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. Provided further, no question or issue may be raised or presented by the Commission as to the

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a. Name, social security number, spouse's name, spouse's social security number, and county of residence.

b. Filing status and federal personal exemptions.

c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.

d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.

e. Exemption for children, nonresidents, and part-year residents' exemption for children, credit for children.

f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for

child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses."

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"(q) Each county Employment Security Commission local or branch office shall organize a Job Service Employer ~~Committee, based on the membership makeup of the Job Service Employer Committees in existence at the time this act becomes law.~~ Committee. The Chairman of the Employment Security Commission shall appoint the Job Service Employer Committee members, each of whom shall serve two-year terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall organize a State Job Service Employer Committee consisting of eight members who shall serve two-year terms. The Chairman of the Employment Security Commission shall appoint the State Job Service Employer Committee members after consultation with the Governor. The Employment Security Commission shall adopt rules and regulations concerning the meeting schedule and the conduct of meetings of each Job Service Employer Committee. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Joint Legislative Public Assistance Commission by the end of each calendar year. ~~Counties having a Workforce Development Board may designate the Board to perform the duties described in this section rather than organizing a Job Service Employer Committee.~~"

Section 10. G.S. 96-12(b)(4) reads as rewritten:

"(4) Qualifying Wages for Second Benefit Year. -- An individual whose prior benefit year has expired and who files a new benefit claim is not entitled to benefits unless the individual has been paid qualifying wages since the beginning date of the prior benefit year and before the date the new benefit claim was filed equal to at least ~~10 times the individual's weekly benefit amount under the new benefit claim.~~ six times the average weekly insured wage, obtained in accordance with G.S. 96-8(22), and has been paid wages in at least two

quarters of the individual's base period. "Qualifying wages" are wages earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85."

Section 11. Sections 3, 7, and 10 of this act become effective July 1, 1999, with Sections 7 and 10 applying to unemployment insurance claims filed on or after that date. The remainder of this act is effective when it becomes law.

#2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 277
PROPOSED COMMITTEE SUBSTITUTE H277-CSSB-002
15:31:45 EZT / 6-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: "Family Friendly" UI Exception. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT AN INDIVIDUAL MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT INSURANCE BENEFITS WHEN THE INDIVIDUAL'S INABILITY TO ACCEPT BONA FIDE PERMANENT EMPLOYMENT DURING A PARTICULAR SHIFT WOULD RESULT IN AN UNDUE FAMILY HARDSHIP AND TO PROVIDE THAT AN INDIVIDUAL MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT INSURANCE BENEFITS WHEN THE INDIVIDUAL'S DISCHARGE IS SOLELY DUE TO AN INABILITY TO ACCEPT WORK DURING A PARTICULAR SHIFT AS THE RESULT OF AN UNDUE FAMILY HARDSHIP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(10a) 'Undue family hardship' arises when an individual is unable to accept a particular shift because the individual is unable to obtain (i) child care during that shift for a minor child under 14 years of age who is in the legally recognized custody of the individual or (ii) elder care during that

shift for an aged or disabled parent of the individual."

Section 2. G.S. 96-8(24) reads as rewritten:

"(24) Work, for purposes of this Chapter, means any bona fide permanent ~~employment.~~ employment the acceptance of which would not result in an undue family hardship as defined in G.S. 96-8(10a). For purposes of this definition, 'bona fide permanent employment' is presumed to include only those employments of greater than 30 consecutive calendar days duration (regardless of whether work is performed on all those days) provided: (a) the presumption that an employment lasting 30 days or less is not bona fide permanent employment may be rebutted by a finding by the Commission, either on its own motion or upon a clear and convincing showing by an interested party that the application of the presumption would work a substantial injustice in view of the intent of this Chapter; (b) Any decision of the Commission on the question of bona fide employment may be disturbed on judicial review only upon a finding of plain error."

Section 3. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which

satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); ~~or~~ (vi) separation due to leaving for disability or health ~~condition~~ condition; or (vii) separation of claimant solely as the result of an undue family hardship as defined in G.S. 96-8(10a) shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be

deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 4. G.S. 96-14 is amended by adding a new subdivision to read:

"(1g) For purposes of this Chapter, separation or discharge solely due to an inability to accept work during a particular shift as a result of an undue family hardship as defined in G.S. 96-8(10a) shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer."

Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS H277-CSSB-002

H. B. No. 277 DATE 4-14-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Redwine
)
Sen.)

1 moves to amend the bill on page 4, line 19
2 ( ) WHICH CHANGES THE TITLE
3 by adding a new sentence at the end of
4 that line to read:
5 "This act expires June 30, 2001.".
6
7
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17
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19

SIGNED _____

ADOPTED ✓ 4-14-99 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 276 A BILL TO BE ENTITLED AN ACT MAKING VARIOUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 277 A BILL TO BE ENTITLED AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT AN INDIVIDUAL MAY NOT BE DISQUALIFIED FOR UNEMPLOYMENT INSURANCE BENEFITS WHEN THE INDIVIDUAL'S INABILITY TO ACCEPT BONA FIDE PERMANENT EMPLOYMENT DURING A PARTICULAR SHIFT WOULD RESULT IN AN UNDUE FAMILY HARDSHIP.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

Ways + Means — Name of Committee

4-14-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Parker Chesson	ESC
Tom Whitaker	ESC
CP Medlin	Commerce w/ NC's Children
Cam Cover	BPMH L
Brenda Summers	NC Equity
Leslie Rodrigue	NCCBI
Bill Rayland	Rayland Electrical Supply
Wayne Davis	COMMERCE
Lyn Ayscue	Commerce
PB	NCFB
[illegible]	Jd. AL
[illegible]	NCFPC
[illegible]	NCFPC
[illegible]	COMMERCE
RW Zaytoun	COMMERCE
Bill Swaggin	NC Bar Assoc

VISITOR REGISTRATION SHEET

Ways & Means — 4-14-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kim Hibbard	NCLM
Richard Whitted	UTU
Mike Quinn	NC State AFL-CIO
Hugh Adams	GR&C
Kathryn Sawyer	Commerce
Frank McNeil	Sheriff's Union County
Keith Hein	GWC
Hal Wilson	NCACCT
Walter Price	CHARLOTTE CHAMBER
Patrice Reeves	NAACP
Patricia A. Jarvis	APPCNC/SCSL/ACLU
Johnny Williams	Sheriff's of Warren County
Alan Mebane	Bailey & Dixon LLP
Marian Dowd	League of Women Voters NC
John Jordan	NC CWA Council

(8)

VISITOR REGISTRATION SHEET

Ways and Means — 4-14-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
A.B. Swindell IV	BFT

House Committee
on
Ways and Means

Minutes
April 14, 1999

The House Committee on Ways and Means met at 1:00 p.m. on Wednesday, April 14, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order. He recognized Rep. Owens to continue explaining **HB 330 (Workforce Development/AB)** which was carried over from the morning meeting. During that meeting, Members had expressed the feeling that the bill should be re-referred to the Committee on Appropriations, but Rep. Owens did not agree.

Rep. Starnes requested a fiscal note.

Rep. Redwine assured Rep. Owens that this issue would slow or even prevent the bill from passing on the House Floor.

Rep. Nesbitt read the House rules and determined that the bill should be re-referred to Appropriations.

Rep. Michaux's previous motion to give the bill a favorable report and to re-refer it to the Committee on Appropriations was before the committee and passed.

HB 283 (State treasurer's Investment Authority), sponsored by Rep. Gordon Allen, was before the committee. Rep. Allen was recognized and explained that the bill would make technical changes to the statutes governing the State Treasurer's investment authority. It would also amend the institutions with which the State Treasurer can invest funds from the General Fund and Highway Funds, and would add the North Carolina National Guard Pension and the Retiree Health premium Reserve Account to the list of funds governed by G.S. 147-69.2.

Keith Leonard from the State Treasurer's Office was recognized and expressed support for the bill.

Rep. Monroe Buchanan sent forth a technical amendment which changed the title of the bill. His amendment was adopted.

Rep. Joni Bowie was concerned about the language referring to the Highway Funds and submitted an amendment addressing this. Her amendment was also adopted.

Rep. Fox also had concerns about the bill and sent forth a clarifying amendment. His amendment was also adopted.

Rep. Buchanan moved to incorporate the amendments and original bill into a committee substitute bill, give the committee substitute bill a favorable report, unfavorable to original bill. His motion passed.

HB 291 (Chief of Militia Powers/AB) was before the Committee. Rep. Phil Baddour, the bill sponsor, was recognized to explain the bill. He distributed a proposed committee substitute to the Committee and Rep. Redwine moved for its adoption. His motion passed.

Rep. Baddour explained that the committee substitute authorizes the Governor to place individuals, units, or parts of units of North Carolina National Guard into State Active duty status to assist with the planning, support and execution of activities connected with the swearing-in and installation of the Governor and other members of the Council of State.

Rep. Bowie moved to give the committee substitute a favorable report, unfavorable to original bill. Her motion passed.

Rep. Nesbitt informed members of the Committee that there were two very similar bills in the Committee and that, without objection, these two would be heard at the same time.

Rep. David Redwine was then recognized to explain **HB 461 (Release of DMV Information)** and Rep. Robert Grady was recognized to explain **HB 425 (Drivers License Information Not for Sale).**

Rep. Redwine explained that HB 461 provides that the Division of Motor Vehicles shall not release personal information for bulk distribution purposes unless the Division receives prior written permission from the person about whom the information is requested. He said this is an "Opt Out" bill.

Under the current law the DMV may release personal information for the purposes of bulk distribution for surveys, marketing, or solicitations. In 1998, however, the General Assembly enacted in the Session Laws a prohibition against the release of this information.

Rep. Grady explained that **HB 425** would make permanent the prohibition passed in 1998 against the release of personal information by the Division of Motor Vehicles for bulk distribution for surveys, marketing, or solicitations.

Discussion followed. Rep. Buchanan agreed with both bills. Rep. Fox wondered how much money the state would lose if DMV was prohibited from selling this information. Rep. Redwine said the amount varied from $24,000 to $68,834 per fiscal year.

Lobbyists from Polk and Company and the Direct Marketers Association opposed the bill.

Rep. Buchanan moved to amend **HB 461** by deleting the provision requiring that permission for release must be give in accordance with 18 USC Section 2721(d) and his amendment was adopted.

He then moved to incorporate the amendment and the original bill into a committee substitute bill, to give the committee a favorable report, the original bill an unfavorable report. His motion passed.

HB 425 was displaced.

There being no further business, the Committee adjourned at 2:20 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 14, 1999
1:00 p.m.

1:00 Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 283 State Treasurer's Investment Authority **(Allen)**
HB 291 Chief of Militia Powers **(Baddour)**

ADJOURNMENT

HOUSE BILL 330:
N.C. Workforce Development/AB

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Owens
		Summary by:	Tim Hovis Committee Counsel
Date:	April 13, 1999		
Version:	First Edition		

SUMMARY: House Bill 330 creates the new 40 member Commission on Workforce Development. The Commission is created to develop a unified State plan for workforce training and development. The Commission will also serve as the State's Workforce Investment Board for the purposes of the federal Workforce Investment Act of 1998.

The bill also creates Local Workforce Development Boards to develop local workforce development plans and serve as the Workforce Investment Board for the designated substate area under the federal act. Finally, the bill establishes in the Department of Commerce an Employment and Training Grant Program to allocate grant funds to local boards to implement local employment and training programs.

BILL ANALYSIS: House Bill 330 repeals Part 3A of Article 10 of Chapter 143B of the General Statutes, *the Employment and Training Act of 1985.* The bill then establishes a new Part 3B entitled Workforce Development, which creates within the Department of Commerce the N.C. Commission on Workforce Development. Among the Commission's duties include the development of strategies to produce a skilled workforce, the coordination and development of strategies for cooperation between the academic, governmental, and business sectors, and the development of a comprehensive workforce development plan to be submitted biennially to the Governor and the General Assembly. The Commission also serves as the State's Workforce Investment Board for purposes of the federal Workforce Investment Act of 1998.

The Commission consists of 40 members including the Secretary of the Department of Health and Human Services, the Chair of the Employment Security Commission, the Superintendent of Public Instruction, the President of the Community College System, the Commissioner of the Department of Labor, and the Secretary of the Department of Commerce. In addition to these members, the Governor appoints 32 members representing educational (6 members), local (2 members), labor (6 members), and business (18 members) interests. The President Pro Tempore and the Speaker each appoint one member of their respective bodies to serve on the Commission.

The bill establishes local workforce development boards to develop policy and plans at the local level for workforce development. These local boards also serve as the Workforce Investment Board for the designated substate area under the federal Workforce Investment Act. The local boards are appointed by local elected officials in accordance with criteria established by the Governor and the provisions of the federal act.

Finally, the bill establishes in the Department of Commerce and Employment and Training Grant Program. Funds under the Program are to be allocated to local boards for local employment and training programs. Grant funds may be used only for services to indivudals who meet federal eligibility definitions for adults, dislocated workers and the poor.

HOUSE BILL 330:
N.C. Workforce Development/AB

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Owens
		Summary by:	Tim Hovis Committee Counsel
Date:	April 13, 1999		
Version:	First Edition		

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 283

Short Title: State Treasurer's Investment Authority. (Public)

Sponsors: Representatives Allen; and Hunter.

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATE TREASURER'S INVESTMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-69.1 reads as rewritten:

"**§ 147-69.1. Investments authorized for General Fund and Highway ~~Fund~~ Funds assets.**

(a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:

(1) The General Fund;

(2) The Highway ~~Fund.~~ Funds.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the

Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.

(3) Repurchase Agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment by this section executed by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.

(4) Obligations of the State of North Carolina;

(5) ~~a. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office~~ Time deposits of financial institutions operating in North ~~Carolina;~~ Carolina for the purpose of receiving commercial or retail deposits; provided that any principal amount of such ~~certificate~~ deposit in excess of the amount insured by the federal government or any agency thereof, ~~or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Commerce of the State of North Carolina, be fully collateralized;~~ be fully secured by surety bonds, or

~~b. Certificates of deposit issued by banks organized under the laws of the State of North Carolina, or by any national bank having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof,~~ be fully collateralized; provided further that

~~c. With respect to savings certificates and certificates of deposit,~~ the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity;

~~d. Shares of or deposits in any savings and loan association organized under the laws of the State of North Carolina, or any federal savings and loan association having its principal office in North Carolina; provided that any moneys invested in such shares or deposits in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the~~

~~Department of Commerce of the State of North Carolina, be fully secured by surety bonds, or be fully collateralized.~~

~~e.~~(6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

~~f.~~(7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

~~g.~~(8) Asset-backed securities (whether considered debt or equity) provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest rating by any nationally recognized rating service which rates the particular securities.

~~h.~~(9) Corporate bonds and notes provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest by any nationally recognized rating service which rates the particular obligation.

~~(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10.~~

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway ~~Fund~~ Funds shall be paid into the State Highway ~~Fund.~~ Funds. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of January, April, July and October in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor and Council of State; and a

copy shall be posted in the office of the State Treasurer for the information of the public.

(f) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10.

(g) If and to the extent the General Assembly shall authorize the sale of all or any part of the stock owned by the State in the North Carolina Railroad Company or the Atlantic and North Carolina Railroad Company, the proceeds of any sale shall be separately accounted for and invested as expressly directed by the General Assembly, but in the absence of any express direction as to investment, the proceeds may be invested as authorized by this section."

Section 2. G.S. 147-69.2(a) reads as rewritten:

"(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, ~~and~~
~~(17a)~~(18) North Carolina Veterans Home Trust ~~Fund.~~ Fund,
(19) North Carolina National Guard Pension Fund,
(20) Retiree Health Premium Reserve Account, and
~~(18)~~(21) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act."

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

HOUSE BILL 283:
State Treasurer's Investment Authority

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Allen
Date:	April 14, 1999	**Summary by:**	Jeff Hudson
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 283 makes technical changes to the statutes governing the State Treasurer's investment authority, amends the institutions with which the State Treasurer can invest funds from the General Fund and Highway Funds, and adds the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account to the list of funds governed by G.S. 147-69.2 (Investments authorized for special funds held by State Treasurer).

References to the Highway Funds

Although there are two highway funds, the Highway Fund and the Highway Trust Fund, the State Treasurer's investment authority for these two Funds refers to a singular Highway Fund. House Bill 283 pluralizes these references.

Investment of Monies in the General Fund and Highway Funds

Currently, under G.S. 147-69.1(c)(5), the State Treasurer can invest funds from the General Fund and the Highway Funds in certificates issued by a financial institution organized under North Carolina law or having its principal office in North Carolina. House Bill 283 amends G.S. 147-69.1 (Investments authorized for General Fund and Highway Fund assets) so that the State Treasurer can invest monies from the General Fund and Highway Funds in time deposits of a financial institution that is not organized under North Carolina law and that does not have its principal office in North Carolina. The requirements that investments made from monies in the General and Highway Funds be fully secured by surety bonds or fully collateralized and the requirements for rate of return remain the same.

Investment of Monies in the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account

Under current law, the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account are not specifically set out in either statute governing the State Treasurer's investment authority. House Bill 283 provides that monies from the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account shall be invested according to the provisions of G.S. 147-69.2 (Investments authorized for special funds held by the State Treasurer).

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

§ 147-69. Deposits of State funds in banks and savings and loan associations regulated.

Banks and savings and loan associations having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks and savings and loan associations in which he may deposit or cause to be deposited any of the public funds, and such accounts shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank or savings and loan association shall be authorized to pay checks not bearing his official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing his signature to warrants, checks or any other instrument he is required by law to sign. The Commissioner of Banks and the bank examiners, and the Administrator of the Savings Institutions Division, and savings and loan examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks and savings and loan associations, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank or savings and loan association, require ample security from the bank or savings and loan association for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C.S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1; 1983, c. 158, s. 4; 1987, c. 751, s. 1; 1989, c. 76, s. 27.)

Legal Periodicals. — For comment on the 1949 amendment to this section, see 27 N.C.L. Rev. 425 (1949).

§ 147-69.1. Investments authorized for General Fund and Highway Fund assets.

(a) The Governor and Council of State, with the advice and assistance of the State Treasurer, shall adopt such rules and regulations as shall be necessary and appropriate to implement the provisions of this section.

(b) This section applies to funds held by the State Treasurer to the credit of:

(1) The General Fund;

(2) The Highway Fund.

(c) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (b) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;

(2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Associa-

tion, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.

(3) Repurchase Agreements with respect to securities issued or guaranteed by the United States government or its agencies or other securities eligible for investment by this section executed by a bank or trust company or by primary or other reporting dealers to the Federal Reserve Bank of New York.

(4) Obligations of the State of North Carolina;

(5)a. Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Commerce of the State of North Carolina, be fully collateralized;

b. Certificates of deposit issued by banks organized under the laws of the State of North Carolina, or by any national bank having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, be fully collateralized;

c. With respect to savings certificates and certificates of deposit, the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity;

d. Shares of or deposits in any savings and loan association organized under the laws of the State of North Carolina, or any federal savings and loan association having its principal office in North Carolina; provided that any moneys invested in such shares or deposits in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Administrator of the Savings Institutions Division of the Department of Commerce of the State of North Carolina, be fully secured by surety bonds, or be fully collateralized.

e. Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

f. Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral

by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

g. Asset-backed securities (whether considered debt or equity) provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest rating by any nationally recognized rating service which rates the particular securities.

h. Corporate bonds and notes provided they bear the highest rating of at least one nationally recognized rating service and do not bear a rating below the highest by any nationally recognized rating service which rates the particular obligation.

(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10, effective June 21, 1990.

(d) Unless otherwise provided by law, the interest or income received and accruing from all deposits or investments of such cash balances shall be paid into the State's General Fund, except that all interest or income received and accruing on the monthly balance of the Highway Fund shall be paid into the State Highway Fund. The cash balances of the several funds may be combined for deposit or investment purposes; and when such combined deposits or investments are made, the interest or income received and accruing from all deposits or investments shall be prorated among the funds in conformity with applicable law and the rules and regulations adopted by the Governor and Council of State.

(e) The State Treasurer shall cause to be prepared quarterly statements on or before the tenth day of January, April, July and October in each year, which shall show the amount of cash on hand, the amount of money on deposit, the name of each depository, and all investments for which he is in any way responsible. Each quarterly statement shall be delivered to the Governor and Council of State; and a copy shall be posted in the office of the State Treasurer for the information of the public.

(f) Repealed by Session Laws 1989 (Regular Session, 1990), c. 813, s. 10, effective June 21, 1990.

(g) If and to the extent the General Assembly shall authorize the sale of all or any part of the stock owned by the State in the North Carolina Railroad Company or the Atlantic and North Carolina Railroad Company, the proceeds of any sale shall be separately accounted for and invested as expressly directed by the General Assembly, but in the absence of any express direction as to investment, the proceeds may be invested as authorized by this section. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1969, c. 125; 1975, c. 482; 1979, c. 467, s. 1; c. 717, s. 1; 1981, c. 801, ss. 1, 2; 1985, c. 313, c. 3; 1987, c. 751, ss. 2-4; 1987 (Reg. Sess., 1988), c. 882, s. 5; 1989, c. 76, s. 28; c. 751, s. 7(43); 1989 (Reg. Sess., 1990), c. 813, s. 10; 1991 (Reg. Sess., 1992), c. 959, s. 75; 1993, c. 105, s. 2.)

for the repayment of the loan."

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and
(17a) North Carolina Veterans Home Trust Fund.
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);
(2) General obligations of other states of the United States;
(3) General obligations of cities, counties and special districts in North Carolina;
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;
(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;
(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating

services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service which rates the particular securities;

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

a. That common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system;

b. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. That in applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

d. That the book value of common and preferred stocks including securities convertible into common stocks

shall not exceed fifty per centum (50%) of the book value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1½%) of the book value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.

e. Up to five per cent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000).

f. Individual, common or collective trust funds of banks or trust companies provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of The North Carolina Enterprise Corporation, or of a limited partnership in which The North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss.

(b1) With respect to investments authorized by subsection (b)(8), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Trea-

surer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(c) Repealed by Session Laws 1995, c. 501, s. 2, effective July 28, 1995. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27.)

Editor's Note. —

Session Laws 1995, c. 501, s. 5, repealed Session Laws 1987, c. 446 and c. 1070, which added former subsection (c) and contained uncodified provisions regarding the investment of retirement system or trust fund assets in the stocks or securities of a company doing business in the Republic of South Africa.

Subdivision (a)(17.1) of this section was renumbered as subdivision (a)(17a) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 147-72. Ex officio treasurer of State institutions; duties as such.

The Treasurer shall be ex officio the treasurer of the Department of Agriculture and Consumer Services, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c. 28; c. 211, s. 9; 1883, c. 156, s. 12; c. 405; Code, ss. 2235, 2251, 3723;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 283

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H283-ASB-001.01

Date 4-14- ,1999

Comm. Sub. [NO]
Amends Title [YES]
FIRST EDITION

Representative Buchanan

moves to amend the bill on page 1, line 2,
by rewriting that line to read:
"AN ACT TO AMEND THE".

SIGNED C. Buchanan
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. 283 DATE 4-14-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Bowie
)
Sen.)

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by deleting the word "Funds." and substituting the words "Fund and Highway Trust Fund."; and on page 3, line 33 by deleting the word "Funds." and substituting the words "Fund and Highway Trust Fund."; and on page 3, line 34 by deleting the word "Funds." and substituting the words "Fund and Highway Trust Fund."

SIGNED Jeanne H. Bowie

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. 1

H. B. No. 283 DATE 4-14-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) FOX

moves to amend the bill on page 2, line 17

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"institutions with a physical presence in North ~~Carolina~~ Carolina for the".

SIGNED _____

ADOPTED ✓ 4-14-99 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 291

Short Title: Chief of Militia Powers/AB. (Public)

Sponsors: Representatives Baddour; and Sexton (Primary Sponsors).

Referred to: Ways and Means.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ADDITIONAL POWER TO THE GOVERNOR AS THE CHIEF OF THE STATE'S MILITIA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 127A-16 reads as rewritten:

"**§ 127A-16. Governor as commander in chief.**

(a) The Governor shall be commander in chief of the militia and shall have power to call out the militia to execute the laws, secure the safety of persons and property, suppress riots or insurrections, repel invasions and provide disaster relief.

(b) The Governor shall have the additional power, subject to the availability of funding, to place individuals, units, or parts of units of the North Carolina National Guard in a State Active Duty status to assist with the planning, support, and execution of special events having a statewide public interest. Examples of such special statewide public interest events include State inaugural activities and State, national, and international olympic events."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H291-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 291
THIS IS A DRAFT 13-APR-99 17:10:34
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Chief of Militia Powers/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GOVERNOR AS THE CHIEF OF THE STATE'S MILITIA SHALL HAVE THE POWER TO PLACE INDIVIDUALS AND UNITS OR PARTS OF UNITS OF OF THE NORTH CAROLINA NATIONAL GUARD TO ASSIST WITH STATE INAUGURAL ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 127A-16 reads as rewritten:

"**§ 127A-16. Governor as commander in chief.**

(a) The Governor shall be commander in chief of the militia and shall have power to call out the militia to execute the laws, secure the safety of persons and property, suppress riots or insurrections, repel invasions and provide disaster relief.

(b) The Governor shall have the additional power, subject to the availability of funding, to place individuals, units, or parts of units of the North Carolina National Guard in a State Active Duty status to assist with the planning, support, and execution of activities connected with the swearing-in and installation of the Governor and other members of the Council of State."

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

HOUSE BILL 291:
Chief of Militia Powers/AB

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representatives Baddour and Sexton
Date:	April 13, 1999	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 291 authorizes the Governor to place individuals, units, or parts of units of the North Carolina National Guard into State Active Duty status to assist with the planning, support and execution of activities connected with the swearing-in and installation of the Governor and other members of the Council of State.

House Bill 291 is effective when it becomes law.

HOUSE BILL 461:
Release of DMV Information

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Redwine
Date:	April 13, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 461 provides that the Division of Motor Vehicles shall not release personal information for bulk distribution purposes unless the Division receives prior written permission from the person about whom the information is requested.

CURRENT LAW: 18 U.S.C. 2721(b)(12) provides that the Division of Motor Vehicles may release personal information for the purposes of bulk distribution for surveys, marketing, or solicitations. However, in 1998, the General Assembly enacted in the Session Laws a prohibition against the release of this information by the Division.

BILL ANALYSIS: House Bill 461 codifies in G.S. 20-43.1 this prohibition against the release of personal information for bulk distribution purposes and repeals the prohibition in the Session Laws. House Bill 461 does provide that personal information may be released if written permission is received from the person about whom the information is requested.

MEDIUM CUSTODY ROAD CREW COMPENSATION

Section 27.16. (a) Of funds appropriated to the Department of Transportation by this act, six million five hundred thousand dollars ($6,500,000) shall be used by the Department to reimburse the Department of Correction during the 1998-99 fiscal year for costs authorized by G.S. 148-26.5 for reimbursement for highway-related labor performed by medium custody prisoners. The Department of Transportation may use funds appropriated by this act to pay requested reimbursements submitted by the Department of Correction over and above the six million five hundred thousand dollars ($6,500,000), but those reimbursement requests shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

(b) Sections 19.16 and 32.2 of S.L. 1997-443 are repealed.

Requested by: Representative Hiatt

DMV MEDICAL EVALUATION PROGRAM ENHANCEMENT FUNDS

Section 27.17. Of funds appropriated from the Highway Fund to the Division of Motor Vehicles, the sum of ninety-three thousand five hundred thirteen dollars ($93,513) for the 1998-99 fiscal year shall be used to fund an additional Public Health Physician II in the Department of Health and Human Services to review the medical records of the growing number of drivers referred to the Drivers License Medical Evaluation Program. This implements a recommendation of the Drivers License Medical Evaluation Program Study Commission.

Requested by: Senator Jordan, Representatives Bowie, Dockham, McMahan

DISCLOSURE OF PERSONAL INFORMATION IN MOTOR VEHICLE RECORDS

Section 27.18. (a) Section 17.1 of Chapter 23 of the 1998 Session Laws reads as rewritten:

"Section 17.1. Notwithstanding any other provision of law, the Division of Motor Vehicles shall not disclose personal information in its records for purposes specified in 18 U.S.C § 2721(b)(12) prior to ~~July 1, 1999.~~ January 1, 2000. This section shall not expire until ~~July 1, 1999.~~ January 1, 2000."

(b) The Joint Legislative Transportation Oversight Committee shall study the issue of disclosure of personal information in Division of Motor Vehicles records and report its recommendations to the General Assembly on or before December 1, 1999.

PART XXVIII. SALARIES AND BENEFITS

Requested by: Senators Plyler, Perdue, Odom

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

Section 28.2. (a) Section 33.2 of Chapter 443 of the 1997 Session Laws, as amended by Section 5 of S.L. 1998-153, reads as rewritten:

"Section 33.2. The annual salaries, payable monthly, for the 1998-99 fiscal year, beginning July 1, 1998, for the following executive branch officials are:

Executive Branch Officials	Annual Salary
Chairman, Alcoholic Beverage Control Commission	$86,602
State Controller	121,199
Commissioner of Motor Vehicles	86,602

§ 2710(c), where internal affairs investigation, concerning alleged removal by police officer of pornographic videotapes and magazines from decedent's apartment during investigation of his death, led to lieutenant's obtaining and disclosing in disciplinary proceedings names and rental dates of certain pornographic videotapes previously rented by police officer and his wife from public video store, because importance of maintaining privacy of individual's personally identifiable information mandates that people who obtain such information from videotape service providers also be held as proper defendants. Dirkes v. Borough of Runnemede (1996, DC NJ) 936 F Supp 235, 11 BNA IER Cas 1828.

CHAPTER 123. PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec.
2721. Prohibition on release and use of certain personal information from State motor vehicle records
2722. Additional unlawful acts
2723. Penalties
2724. Civil action
2725. Definitions

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1994. Act Sept. 13, 1994, P. L. 103-322, Title XXX, § 300002(a), 108 Stat. 2099, added the chapter heading.

1996. Act Oct. 11, 1996, P. L. 104-294, Title VI, § 604(a)(3), 110 Stat. 3506 (effective on 9/13/94, pursuant to § 604(d) of such Act, which appears as 18 USCS § 13 note), added the chapter analysis.

§ 2721. Prohibition on release and use of certain personal information from State motor vehicle records [Caution: See note below with respect to the effective date of this section.]

(a) In general. Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.

(b) Permissible uses. Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49 [49 USCS §§ 30101 et seq., 30501 et seq., 32101 et seq.–33101 et seq.], and may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49 [49 USCS §§ 31301 et seq.].

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that—

(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) **Resale or redisclosure.** An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter [18 USCS §§ 2701 et seq.] must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) **Waiver procedures.** A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(Added Sept. 13, 1994, P. L. 103-322, Title XXX, § 300002(a), 108 Stat. 2094; Oct. 11, 1996, P. L. 104-287, § 1, 110 Stat. 3388; Oct. 11, 1996, P. L. 104-294, Title VI, § 604(b)(46), 110 Stat. 3509.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "National Traffic and Motor Vehicle Safety Act of 1966", is Act Sept. 9, 1966, P. L. 89-563, 80 Stat. 718, which appears generally as 15 USCS §§ 1381 et seq. For full classification of such Act, consult USCS Tables volumes.

"Titles I and IV of the Anti-Car Theft Act of 1992", referred to in this section, are Title I and IV of Act Oct. 25, 1992, P. L. 102-519. For full classification of such Titles, consult USCS Tables volumes.

Effective date of section:

This section is effective 3 years after enactment, pursuant to Act Sept. 13, 1994, P. L. 103-322, Title XXX, § 300003, 108 Stat. 2102, which appears as a note to this section.

Amendments:

1996. Act Oct. 11, 1996, P. L. 104-287, in subsec. (b), in the introductory matter, substituted "titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49" for "the Automobile Information Disclosure Act , the Motor Vehicle

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 461 DATE 4-14-99

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

Rep.) Buchanan
Sen.)

moves to amend the bill on page 1, lines 19-21,

by rewriting the lines to read:

"specified in 18 U.S.C. §2721(b)(12) unless the Division receives prior written permission from the person about whom the information is requested."

SIGNED Charles Buchanan

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 425:
Drivers License Info Not For Sale

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Grady
		Summary by:	Tim Hovis Committee Counsel
Date:	April 13, 1999		
Version:	First Edition		

SUMMARY: House Bill 425 makes permanent the prohibition passed in 1998 against the release of personal information by the Division of Motor Vehicles for bulk distribution for surveys, marketing, or solicitations.

BILL ANALYSIS: 18 U.S.C. 2721(b)(12) allows personal information to be disclosed from State motor vehicle records for bulk distribution for surveys, marketing, or solicitations, if the Division of Motor Vehicles has implemented procedures to ensure that individuals are afforded a clear opportunity to prohibit such use. However, notwithstanding this federal provision, in 1998 the General Assembly directed the Division not to disclose personal information for bulk distribution purposes. This prohibition contains a sunset of January 1, 2000.

House Bill 425 removes the sunset on the prohibition of personal information by the Division for bulk distribution purposes.

§ 2710(c), where internal affairs investigation, concerning alleged removal by police officer of pornographic videotapes and magazines from decedent's apartment during investigation of his death, led to lieutenant's obtaining and disclosing in disciplinary proceedings names and rental dates of certain pornographic videotapes previously rented by police officer and his wife from public video store, because importance of maintaining privacy of individual's personally identifiable information mandates that people who obtain such information from videotape service providers also be held as proper defendants. Dirkes v. Borough of Runnemede (1996, DC NJ) 936 F Supp 235, 11 BNA IER Cas 1828.

CHAPTER 123. PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec.
2721. Prohibition on release and use of certain personal information from State motor vehicle records
2722. Additional unlawful acts
2723. Penalties
2724. Civil action
2725. Definitions

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1994. Act Sept. 13, 1994, P. L. 103-322, Title XXX, § 300002(a), 108 Stat. 2099, added the chapter heading.

1996. Act Oct. 11, 1996, P. L. 104-294, Title VI, § 604(a)(3), 110 Stat. 3506 (effective on 9/13/94, pursuant to § 604(d) of such Act, which appears as 18 USCS § 13 note), added the chapter analysis.

§ 2721. Prohibition on release and use of certain personal information from State motor vehicle records [Caution: See note below with respect to the effective date of this section.]

(a) In general. Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.

(b) Permissible uses. Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49 [49 USCS §§ 30101 et seq., 30501 et seq., 32101 et seq.–33101 et seq.], and may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

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L. 104-287, § 1,
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(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49 [49 USCS §§ 31301 et seq.].

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that—

(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) **Resale or redisclosure.** An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter [18 USCS §§ 2701 et seq.] must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) **Waiver procedures.** A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(Added Sept. 13, 1994, P. L. 103-322, Title XXX, § 300002(a), 108 Stat. 2094; Oct. 11, 1996, P. L. 104-287, § 1, 110 Stat. 3388; Oct. 11, 1996, P. L. 104-294, Title VI, § 604(b)(46), 110 Stat. 3509.)

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Effective date of section:

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VISITOR REGISTRATION SHEET

Ways & Means — 4/14/99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowland	Rowland Electrical Supply
Wayne Davis	Commerce
John Phelps	NCLM
[illegible]	DST
Keith Conard	DST
[illegible]	NC Auto Dealers
Cam Cavin	BPMHL
[illegible]	[illegible]
[illegible]	NC ESC
[illegible]	NC-ESC
Jeff Gray	NC FOP
[illegible]	[illegible]
Alan Wiles	Bailey & Dixon LLP
[illegible]	[illegible]
Doug Lassiter	McCleer Consulting
[illegible]	NCLM

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 330 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA COMMISSION ON WORKFORCE DEVELOPMENT; TO CONFORM THE GENERAL STATUTES TO THE FEDERAL WORKFORCE INVESTMENT ACT; AND TO MAKE OTHER STATUTORY CHANGES TO ENHANCE WORKFORCE TRAINING AND DEVELOPMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS**.

☐ Committee Substitute for
H.B. 283 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE STATE TREASURER'S INVESTMENT AUTHORITY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS**.

☐ Committee Substitute for
H.B. 291 A BILL TO BE ENTITLED AN ACT TO PROVIDE AN ADDITIONAL POWER TO THE GOVERNOR AS THE CHIEF OF THE STATE'S MILITIA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☐ Committee Substitute for
H.B. 461 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL RELEASE PERSONAL INFORMATION FOR BULK DISTRIBUTIONS OF SURVEYS, MARKETING, OR SOLICITATIONS ONLY WITH PRIOR WRITTEN APPROVAL OF THE INDIVIDUAL.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes
April 20, 1999

The House Committee on Ways and Means met on Tuesday, April 20, 1999 at 1:00 p.m. in Room 1425 of the legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and announced that **HB 918 (Increase Death Benefits)** would be first on the agenda.

Rep. Marian McLawhorn, the bill sponsor, was to explain the bill. She said the bil would increase the death benefit for law enforcement officers, firemen, rescue squad workers, senior civil air patrol members killed in the line of duty.

Buck Lattimore from the Industrial Commission was recognized and endorsed the bill.

Rep. Fox moved to give the bill a favorable report and to re-refer the bill to the Committee on Pensions and Retirement. His motion passed.

HB 525 (Phone Solicitations/Caller ID) was before the Committee. Rep. Sam Ellis, the bill sponsor, was recognized.

He explained that the bill would prohibit telephone solicitors making telephone solicitations to residential telephone subscribers from blocking a subscriber's use of a caller identification service.

Discussion followed. Rep. Warren moved to amend the bill and her motion passed. Rep. Nesbitt asked staff if this legislation would interfere with interstate commerce laws. They responded that it would not.

Rep. Buchanan moved to incorporate the amendments and bill into a committee substitute, give the committee substitute a favorable report, the original bill an unfavorable report. His motion passed.

HB 885 (Self-Storage/Late Payments) Introduced by Rep. Paul Luebke was before the Committee. Rep. Luebke was recognized to explain the bill. He said the bill would protect customers by requiring contracts for the rental of self-service storage to clearly state certain terms regarding the imposition of late fees, to limit the rate of late fees, and to prohibit interference with access to the rented storage unit during the grace period.

Considerable discussion followed. Rep. Pope proposed two amendments to the bill (See attached Amendment 1 and Amendment 3). His motions passed.

Having been in the self-storage business himself, Rep. Haire told the committee that the bill was too much and he moved to amend the bill four times (See attached Amendment 2, 4, 5, and 6). His motions also passed.

When discussion had ended Rep. Luebke told the Committee that he was just trying to do something to protect consumers.

Rep. Buchanan moved to incorporate all amendment and the original bill into a committee substitute bill, give the committee substitute a favorable report, unfavorable to original bill. His motion passed.

HB 968 (Amend Contested Case Procedure) sponsored by Rep. Nesbitt was before the Committee. Rep. Nesbitt distributed a committee substitute to the Committee for adoption. He explained to the Committee that this is a complex bill and while time was limited during this meeting, he wanted to begin an explanation of the bill so that perhaps it could be voted on during the next meeting.

The meeting was adjourned at 2:15 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 20, 1999
1:00 p.m.

Room 1425

1:00 Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 525 Phone solicitations/Caller ID **(Ellis)**
HB 470 Summerfield Council Removal **(Decker)**
HB 471 Stokesdale Summerfield Zoning **(Decker)**
HB 885 Self-Serve Storage/Late Payments **(Luebke)**
HB 918 Increase Death Benefits **(McLawhorn)**.

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 525

Short Title: Phone Solicitations/Caller ID. (Public)

Sponsors: Representatives Ellis; Baker, Barefoot, Cansler, Hensley, Kiser, Morris, Setzer, and Starnes.

Referred to: Ways and Means.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT TELEPHONE SOLICITORS MAKING TELEPHONE SOLICITATIONS TO RESIDENTIAL TELEPHONE SUBSCRIBERS FROM BLOCKING A SUBSCRIBER'S USE OF A CALLER IDENTIFICATION SERVICE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.1. Telephone solicitations; circumventing caller identification service prohibited.**

(a) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service. No provider of a caller identification service shall be liable for violations of this subsection committed by other persons.

(b) For purposes of this section:

(1) 'Caller identification service' means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) 'Residential telephone subscriber' means a person who subscribes to residential telephone service from a local exchange company or the persons living or residing with that person.

(3) 'Telephone solicitation' means a voice communication over a telephone line for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purpose of obtaining information that will or may be used for that purpose, but does not include any of the following communications:

a. In response to an express request of the person called.

b. Primarily in connection with an existing debt or contract, the payment or performance of which has not been completed at the time of the call.

(4) 'Telephone solicitor' means any legal entity doing business in this State that makes or causes to be made telephone solicitations, including calls made by use of automated dialing or recorded message devices."

Section 2. This act becomes effective October 1, 1999, and applies to telephone solicitations made on or after that date.

HOUSE BILL 525:
Phone Solicitations/Caller ID

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Ellis
Date:	April 20, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 525 prohibits telephone solicitors making telephone solicitations to residential telephone subscribers from blocking the subscriber's use of a caller identification service.***

BILL ANALYSIS: House Bill 525 prohibits telephone solicitors making telephone solicitations to residential telephone subscribers from knowingly blocking the subscriber's use of a caller identification service. House Bill 525 provides that no provider of a caller identification service will be liable for violations of this act committed by other persons. House Bill 525 also provides that a "telephone solicitation" does not include a communication made in response to a request made by the person called or a communication made in connection with debt repayment or contract performance.

EFFECTIVE DATE: This act becomes effective October 1, 1999, and applies to telephone solicitations made on or after October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 525 DATE 4-20-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Warren
Sen.)

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by deleting the word "knowingly"

and substituting the word "intentionally".

SIGNED Edith D Warren

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 885

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors: Representatives Luebke; Alexander, Cole, Dockham, Easterling, Gardner, Mitchell, Mosley, Nesbitt, and Womble.

Referred to: Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES, TO LIMIT THE RATE OF LATE FEES, AND TO PROHIBIT INTERFERENCE WITH ACCESS TO THE RENTED STORAGE UNIT DURING THE GRACE PERIOD.

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 35.

"Self-Service Storage Rental Agreements.

"**§ 66-280. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-281. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"**§ 66-282. Late fees; interference with access to storage prohibited.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment is 10 days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) The self-service storage business shall not engage in any activity that interferes with the consumer's access to the rented self-service storage at least until the rental payment is 10 days or more late.

"**§ 66-283. Violations.**

(a) If a self-service storage business fails to comply with the requirements of this Article or fails to comply with the terms of the contract or any obligation arising from this Article, then, upon written notice to the self-service storage business, the consumer may void the contract.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a self-service storage business.

(c) Upon complaint of any person that a self-service storage business has violated the provisions of this Article, the superior court has jurisdiction to enjoin that defendant from further violations.

(d) The violation of any provision of this Article shall constitute an unfair trade practice under G.S. 75-1.1.

(e) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental agreements for self-service storage entered into on or after that date.

HOUSE BILL 885:
Self-Serve Storage/Late Payments

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Leubke
Date:	April 20, 1999	**Summary by:**	Tim Hovis, Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 885 requires self-service storage rental agreements to provide, in bold type and conspicuously placed, the terms regarding the imposition of late fees. The bill also limits late fees to $15.00 or 15% of the rental payment, whichever is less. Failure to comply with these provisions will enable the consumer to void the rental agreement. The superior court is given the authority to enjoin further violations of the Article. Violation of the Article also constitutes an unfair trade practice under G.S. 75-1.1.***

BILL ANALYSIS: House Bill 885 adds a new Article 35 to Chapter 66 of the General Statutes governing self-service storage rental agreements.

The Article would require a rental agreement for the storage of personal property in a self-service storage facility to provide: (1) in bold type and conspicuously placed, the terms regarding the imposition of late fees; (2) the consequences of late payment; and (3) the terms, if any, pertaining to the payment of court costs, attorneys fees, and any other costs.

The bill also prohibits late fees that exceed $15.00 or 15% of the rental payment, whichever is less, and does not allow the imposition of a late fee unless the rental payment is 10 days or more late. A late fee may only be imposed one time for each late payment and may not be deducted from subsequent rental payments causing the subsequent payment to also be in default. A self-service storage business may not restrict a consumer's access to the storage unit until the payment is at least 10 days late.

Failure of a self-service storage business to comply with the bill's provisions enables the consumer to void the rental agreement. Waiver by the consumer of his or her rights under the Article is void and unenforceable. The superior court is given the authority to enjoin violations of the Article. A violation of the Article also constitutes an unfair trade practice under G.S. 75-1.1, which enables a consumer to seek treble damages from a self-service storage business for any violation of the Article.

EFFECTIVE DATE: This act becomes effective October 1, 1999 and applies to agreements entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 885 DATE 4-20-99

S. B. No. _____ Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Pope
Sen.)

moves to amend the bill on page 2, line 20

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"the provisions of this Article, the court having jurisdiction may enjoin that"

SIGNED Rep. Pope

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. 1

H. B. No. 885 DATE 4-20-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Haire
Sen.)

1 moves to amend the bill on page 2, line s 9 through 11
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines.
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SIGNED Thomas Haire

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. 1

H. B. No. 885 DATE 4-20-99

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Pope
Sen.)

moves to amend the bill on page 2, line S 22 and 23

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the subsequent subsection accordingly.

SIGNED Rep. Pope

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. 1

H. B. No. 885 DATE 4-20-99

S. B. No. _____ Amendment No. 4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Hume
Sen.)

moves to amend the bill on page 2, line S 19 and 21

( ) WHICH CHANGES THE TITLE.

by deleting lines 19 through 21

and relettering the subsequent

subsections accordingly.

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. 1

H. B. No. 685 DATE 4-20-99

S. B. No. _____ Amendment No. 5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Haire

moves to amend the bill on page 1, lines 4-7

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES AND TO LIMIT THE RATE OF LATE FEES."

and on page 2, line 23

by rewriting the line to read:

"§66-282. Late fees."

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. 1

H. B. No. 885 DATE 4-20-99

S. B. No. _____ Amendment No. 6
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Itaive

1 moves to amend the bill on page 2, line ~~4~~
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the number "10" on ~~that~~ that
4
5 line ~~#~~ and substituting the
6
7 number "five" on ~~that~~ that line ~~#~~.
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **April 20, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Mansur	NC Assoc. of Realtors
Joe McClees	McClees Consulting
Henri McClees	" "
Jon Morrow	
Jeff Teem	NRA / Friends of McClees
Doug Lassiter	McClees Consulting
	Bowe & Assoc — NC Firemen
	NC Assoc of Realtors & SMS
Dale McKeel	Scenic North Carolina
Alan Miles	Bailey & Dixon LLP
Jim Case	NCRMA
Paul Stock	NC Bankers Assn.
Joe Foster	GTE Service Corporation
DAVID BENSON	MORNINGSTAR MILLSTAGE-MATTHEWS
Cam Cover	BPMHL

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 918 A BILL TO BE ENTITLED AN ACT TO INCREASE THE DEATH BENEFIT FOR LAW ENFORCEMENT OFFICERS, FIREMEN, RESCUE SQUAD WORKERS, AND SENIOR CIVIL AIR PATROL MEMBERS KILLED IN THE LINE OF DUTY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 525 A BILL TO BE ENTITLED AN ACT TO PROHIBIT TELEPHONE SOLICITORS MAKING TELEPHONE SOLICITATIONS TO RESIDENTIAL TELEPHONE SUBSCRIBERS FROM BLOCKING A SUBSCRIBER'S USE OF A CALLER IDENTIFICATION SERVICE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 885 A BILL TO BE ENTITLED AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES, TO LIMIT THE RATE OF LATE FEES, AND TO PROHIBIT INTERFERENCE WITH ACCESS TO THE RENTED STORAGE UNIT DURING THE GRACE PERIOD.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

House Committee
on
Ways and Means

Minutes
April 21, 1999

The House Ways & Means Committee met Wednesday, April 21, 1999 at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Decker to explain **HB 470 (Summerfield Council Removal).** Rep. Decker asked the Chairman to hold the bill at this time.

Rep. Nesbitt asked Rep. Michaux to preside while he explained **HB 968 (Amend Contested Case Procedure).** He presented a proposed Committee substitute to the Members and moved that it be adopted. His motion passed.

To give the Committee an explanation of the creation and purpose of the Office of Administrative Hearings (OAH), Rep. Nesbitt said back in the 1980s, a number of legislators realized that if State government was after you or did something to you that you thought was wrong, your right of appeal was only to that agency. The agency made the final decision, leaving the individual only the option to appeal to Superior Court. The original Administrative Procedures Act was passed with a lot of exceptions and diluting of the original intent. The bill did, however, create Administrative Law Judges and established oversight of rule-making done by agencies without statutory authority. This bill is an attempt to take it to another level. The situation now is that you can get a hearing before an Administrative Law Judge, but after a ruling is made, it is only advisory to the Agency. The Agency gets to write the final opinion. What this bill does is to say that an Administrative Law Judge's opinion will be a final decision which can be appealed to superior court by either party.

Rep. Nesbitt said there was concern with this bill in the area on the Certificate of Need. CON appeals go straight to the Court of Appeals and not to Superior Court. The only change for them will be a greater recognition that they will list findings of fact made by the judge, and if they disagree with him, they will address each issue and say why they disagree.

When Rep. Nesbitt concluded his explanation, Rep. Michaux and Rep. Buchanan said they supported the bill.

Rep. Connie Wilson, co-sponsor, was recognized and encouraged the committee to support the bill.

Rep. Pryor Gibson wanted to know if the Attorney General had any input in this bill. Rep. Nesbitt said no. He wanted to know how the bill would affect state government, like the State Personnel Commission.

Karen Cochrane-Brown from the Legislative Research Division was recognized to respond to Rep. Gibson's question. She said that presently in state personnel cases when an employee files a grievance against the agency with which they are employed, that grievance is heard by an Administrative Law Judge who recommends a decision which is returned to the State Personnel Commission rather than being returned to the agency. This is one of the unique situations in the current law where it doesn't go back to the exact agency. She said this bill will treat those situations just as any other agency and the A L J decision would be final in those cases. The Agency that employed the individual will have a right to appeal the A L J decision to the Superior Court.

Rep. Gibson said if this is passed, what will happen to the State Personnel Commission? Ms. Brown said the Commission would still have all of the other policy making authority except that contested cases will not be returned to the State Personnel Commission.

Rep. Gibson said he was totally supportive of this bill, but he was concerned that the State Personnel Commission's authority would be lessened. He wanted to amend the bill by exempting the State Personnel Commission from this act.

Rep. Cox said he knows we can't legislate fairness and commonsense, but he hopes that there are "some teeth" in this proposal to protect citizens.

Chief Administrative Law Judge Julian Mann was recognized and asked to speak before the Committee. He said the Office of Administrative Hearings is a central power that provides a source of independent judges who are not under any pressure to do anything but what the law dictates. His concern has been for those cases in which the citizen's petition prevails and is overturned by the agency.

Craig Souza from the NC Healthcare Facilities Association was recognized and said his Association is satisfied with the committee substitute. Hugh Tolson with NC Hospital Association agreed. Mike Carpenter with the NC Homebuilder's Association said he supported the bill. Natalie English with the North Carolina Agri-business Council supported the bill. Steve Wilson with the NC Farm Bureau also supported the bill.

Rep. Gibson sent forth an amendment that would give the State Personnel Commission the same exemption as in CON and to have personnel decisions returned to the original process.

Gibson said this was an attempt to leave that agency, that works very well, alone.

Rep. Nesbitt said the State Personnel Commission was an independent agency.

Rep. Wilson wondered if under this amendment, the state employee would still be required to go through the process of the State Personnel Commission, but in the end would still not have a final decision. She asked Judge Mann about a case from 1998 on sexual harassment. He said he remembered the case and that the Administrative Law Judge ruled in favor of the employee but the State Personnel Commission reversed his decision.

Rep. Wilson encouraged the Committee to defeat the amendment.

Rep. Pope wanted to know how the NC State Employees Association felt about this bill. A representative from SEANC said that they didn't have a problem with the State Personnel Commission.

Rep. Gibson moved to have his amendment adopted. Vote was taken and the Chair was unable to determine. Rep. Michaux asked for a show of hands. The amendment failed by a vote of 10 to 7.

Rep. Nesbitt sent forth a technical amendment and moved that it be adopted. The motion passed. Rep. Wilson moved to incorporate the amendment and committee substitute into a new committee substitute, to give the new committee substitute a favorable report, unfavorable to original bill. The motion passed.

Rep. Hensley was recognized to explain **HB 820 (Voluntary Shared Leave).** He distributed a proposed committee substitute to the Members for adoption and it was adopted. He said the bill orders the State Personnel Commission and the State Board of Education to adopt rules to allow state employee to share leave voluntarily with an immediate family member who is a public school employee.

Discussion followed concerning who could get this leave and if leave could be designated to go to a particular person.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 968

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H968-ASC-001

Date 4-21 ,1999

Comm. Sub. [YES]
Amends Title []
H968-CSRO-003

Representative Nesbitt

moves to amend the bill on page 3, line 28,
by deleting the word "final"; and

on page 5, line 16,
by rewriting the line to read:
"under Article 3A of this Chapter and under 150B-34(b) of this Chapter. After hearing the evidence,".

SIGNED Matt Nesbitt
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Rep. Mosely moved to give the bill a favorable report. The bill was carried over.

The Committee adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

Ways & Means

~~VISITOR REGISTRATION SHEET~~

House Ways and Means Committee **10:00 a.m. April 21, 1999**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Derek O'Herron	2008 S. Mebane St 7330
Gina Murphy	736-B Shawnee Dr.
Alan Cable	217 Trollinger St.
Jason Bennett	
Ricky Jones	402 Brooklyn St.
William Rowenvonger	545 Central Ave
Amy Huffines	1104 mcpherson rd.
asheeq Crumpton	2521 Saddle Club Rd.
Preston McCrary	
Amber Patel	
Senator Shope	524 Edinburgh Dr. Burlington NC 27215
Ann Boschini	523 Circle Dr Burlington NC "
Crystal Jean Easter	705 Durham St. Burlington NC 27215
Patrick Trant	73 Denise Dr, Burlington, NC 27215
PAUL M. ABERNETHY MD	2264 Lakeview Terrace " 27215
Kendrick Shaffner	Misty Spring lot 1 Burlington
Alana Trafficano	2405 Ashton Park Lane Burlington 27215
Alicia Trafficano	2405 Ashton Park LN "
Carr Harkrader	590 Parkview Dr, Burlington 27215
Ryan Gilmore	421 Pine Grove Dr., Burlington, NC
Heather D. Seagroves	101 New Castle Rd, Mebane W. Williams High School 27215
Michael Mountjoy	715 CASCADE AVE. EDEN, NC 27288
Tamika Watlington	1003 N Fisher st, Burlington, NC, 27215
Natonya Bethell	1003 Jackson St, Burlington NC 27215
Teresa Hernandez	518 Key St. Burlington NC 27217
Nicole James	928 Sharpe Rd lot 27 Burlington Nc 27217
Carmen Biggs	620 E Davis St. Burlington NC 27215
Dave Beasley	Burlington Kiwanis

VISITOR REGISTRATION SHEET

House Ways and Means Committee **10:00 a.m. April 21, 1999**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jonathan Barker	1545 Garden Circle Burlington, NC
Vicki Whitman	1843 Travis Lane Burlington, NC 27217
Steve Curtis	311 Neal St. Elon College, NC-27244
Lindsey Jones	1869 Littlejohn Ln. W.
Jeanne Burge	4941 Mt. Vernon Ch. Rd. Burlington, NC 27217
Darrion Jefferies	855 Boone Rd Burlington, N.C 27217
Brian Whitsey	Western High, Alamance Co.
~~Christina Mccann~~	
Christina McCann	Williams High School (8852 Blance Dr. Burlington NC-home)
Stephanie Edwards	Williams High School, Alamance Co.
Jillian Butterfield	713 Veterans Dr. Elon College NC 27244
Lisa Martin	Upper Neuse River Basin Assn.
Jason Moore	OAH. Raleigh
VL McBride	NCOA
Thad Davis	NCAE
Bryan Beatty	DOJ
Jim Kuszaty	NCEI
John Phelps	NCLM

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 968 A BILL TO BE ENTITLED AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 968
Proposed Committee Substitute
H968-CSRO-003
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~ "

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence

available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Section 3. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended~~ Final decision or ~~order of administrative law judge.~~ order.**

(a) Except as provided in ~~G.S. 150B-36(c),~~ subsection (b) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ final decision or order that contains findings of fact and conclusions of law.

(b) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissable under G.S. 150B-29(a),150B-30 or 150B-31.

(c) Except for the exemptions contained in G.S. 150B-1, and subsection (b) of this section, the provisions of this section shall apply to all agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges and final agency decisions."

Section 4. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of

~~commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 or failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~ or by the administrative law judge."

Section 8. G.S. 150B-43 reads as rewritten:

"**§150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

Section 9. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party

law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

Section 5. G.S. 150B-36 is repealed.

Section 6. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25, effective August 14, 1987.

(6) The administrative law judge's ~~recommended~~ final decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the recommended~~ final decision to each party."

Section 7. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or~~

unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing, under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made ~~a recommended~~ the final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a ~~recommended decision or~~ final decision shall be made part of the official record."

Section 11. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

Section 12. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

~~(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the~~

~~recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.~~

~~(b) Standard of Review. After making the determinations, if any, required by subsection (a), the~~ The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case for further proceedings. It may also reverse or modify the ~~agency's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary or capricious."

Section 13. This act becomes effective January 1, 2000, and applies to contested cases commenced on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 968

Short Title: Amend Contested Case Proc. (Public)

Sponsors: Representatives Nesbitt, C. Wilson, Redwine (Primary Sponsors); Alexander, Baker, Barefoot, Berry, Bonner, Braswell, Capps, Cunningham, Earle, Eddins, Ellis, Gardner, Gulley, Hensley, Hill, Howard, Hunter, Morris, Rayfield, Saunders, Starnes, Sutton, Wainwright, Walend, G. Wilson, Wright, and Yongue.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Section 2. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. Recommended decision or order of administrative law judge.**

(a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. The findings of fact shall be supported by a preponderance of the evidence admissable under G.S. 150B-29, 150B-30, or 150B-31."

Section 3. G.S. 150B-36 reads as rewritten:

"**§ 150B-36. Final decision.**

(a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency receives the official record in a contested case, the agency must give each party ~~an opportunity~~ to the contested case 30 days to file exceptions to the decision or order recommended by the administrative law ~~judge,~~ judge and to present written arguments to those in the agency who will make the final decision or order. If none of the parties files exceptions to the recommended decision or order within the 30-day period, the agency is considered to have adopted the administrative law judge's recommended decision or order as the agency's final decision or order.

(2) If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the ~~case, and the~~ case. The determination is subject to judicial review at the conclusion of the case.

(b) (1) A final decision or order in a contested case shall be made by the agency ~~in writing after review of~~ within the time set by G.S. 150B-44. If the agency does not adopt as its final decision or order the recommended decision or order made in the contested case under subsection (a) of this section, it must make a written final decision or order. In making its final decision or order, the agency may consider only the official record as defined in G.S. 150B-37(a) and the exceptions filed by a party. The final decision or order shall include findings of fact and conclusions of law. The findings of fact made in the contested case by the administrative law judge are binding on the agency in making its final decision or order if they are supported by substantial evidence admissible under G.S. 150B-29, 150B-30, or 150B-31 in view of the entire record.

(2) If the agency does not adopt the administrative law judge's recommended decision or order as its final ~~decision,~~ decision or order, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended ~~decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31.~~ decision or order. A copy of the

agency's decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to ~~his~~ each party's attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case."

Section 4. G.S. 150B-37(c) reads as rewritten:

"(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final ~~decision and shall forward a copy of the recommended decision to each party.~~ decision."

Section 5. G.S. 150B-44 reads as rewritten:

"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has ~~90~~ 45 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 30 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~ 45 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or ~~90~~ 45 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 30 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~ 75 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Section 6. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make ~~two~~ three initial ~~determinations.~~ determinations as follows:

(1) ~~First, the~~ The court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(2) ~~Second, if~~ If the agency did not adopt the recommended decision, the court shall determine whether the administrative law judge's findings of fact are supported by substantial evidence admissible under G.S. 150B-29, 150B-30, or 150B-31 in view of the entire record. If the court determines that the agency failed to adhere to the administrative law judge's findings of fact that are supported by substantial evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(3) If the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious."

Section 7. This act becomes effective January 1, 2000, and applies to contested cases commenced on or after the effective date.

HB968
Amend Contested Case

1998

- **ALJ Recommended Decision Adopted by Agency*** - Of the 265 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 224 (85%) of these cases.
- **ALJ Recommended Decision Partially Adopted by Agency*** - Of the 15 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 10 (67%) of these cases.
- **ALJ Recommended Decision Rejected by Agency***** - Of the 43 Recommended Decisions which were rejected by the agency as their Final Agency Decision, the Administrative Law Judge ruled against the agency in 37 (86%) of these cases.

1999

- **ALJ Recommended Decision Adopted by Agency*** - Of the 1 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 1 (100%) of these cases.
- **ALJ Recommended Decision Partially Adopted by Agency*** - Of the 1 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 1 (100%) of these cases.

CONSTANCE K. WILSON
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MEMBER 57TH DISTRICT

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ALJ RECOMMEND DECISIONS REJECTED BY AGENCY IN 1998

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
ABC	97 ABC 1205	N. C. Alcoholic Beverage Control	Kenneth Jerome Hargrove	7/23/98
ABC	98 ABC 0382	Sokha Huor Ramadneh d/b/a	Alcoholic Beverage Control Com	6/30/98
CPS	97 CPS 1499	Cynthia Austin	North Carolina Victims Compens	8/12/98
CPS	98 CPS 0065	Marcella Skaggs	North Carolina Crime Victims	6/5/98
DHR	97 DHR 0746	Geneva B Horne	NC Dept. of Human Resources	1/26/98
DHR	97 DHR 0854	Raleigh Child Care, Inc.	N.C. Dept. of Human Resources;	2/12/98
DHR	97 DHR 0865	Lynn E. Thorpe	Department of Human Resource	1/13/98
DHR	97 DHR 1046	Annie K. Morgan	Department of Human Resource	7/23/98
DHR	97 DHR 1059	Frances B. Morgan	Health Care Personnell Registry	4/7/98
DHR	97 DHR 1118	Brenda Harper	Department of Human Resource	2/2/98
DHR	97 DHR 1193	Genoal Blalock	Department of Human Resource	2/12/98
DHR	97 DHR 1209	Mooresville Hospital Managemen	N.C. Department of Human Res	6/23/98
DHR	97 DHR 1456	Frances B. Morgan	Department of Health and Huma	4/7/98
DHR	97 DHR 1588	Dialysis Care of North Carolina,	North Carolina Department of He	8/31/98
DHR	97 DHR 1672	Robin Anette Reavis	Department of Health Resources	8/12/98
DHR	98 DHR 0173	Helen Shokoti	Department of Health and Huma	8/26/98
DHR	98 DHR 0496	Annie K. Morgan	Dept. of Human Resources	7/23/98
DHR	98 DHR 0666	Stephanie Wade (Vance)	N.C. Dept. of Human Resources	8/19/98
DOJ	97 DOJ 0556	Bobby Earl Maynard	N. C. Criminal Justice Education	5/22/98

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
DOJ	97 DOJ 0976	Richard Allen Price	N. C. Criminal Justice Education	3/12/98
DOJ	97 DOJ 1318	Robert Hoyt Porter	N. C. Sheriffs' Education and Tr	4/9/98
DOJ	97 DOJ 1319	Thomas Dwayne Brown	N. C. Sheriffs' Education and Tr	7/29/98
DOJ	97 DOJ 1547	Thomas Albert Stone	N. C. Criminal Justice Education	4/20/98
DOJ	97 DOJ 1698	Odis Fitzgerald Darden	N. C. Sheriffs' Education and Tr	6/12/98
DST	97 DST 1609	Jane A. Wallace	Board of Trustees, Local Govern	5/14/98
EDC	97 EDC 1233	George & Ruth Sinclair	Wake County Schools	8/11/98
EHR	97 EHR 1459	Lady Lashanda	State of North Carolina Dept. of	7/20/98
OSP	96 OSP 0833	Annette Honea	North Carolina Department of Hu	8/24/98
OSP	96 OSP 1011	Gale Worrells	North Carolina Department of Hu	4/24/98
OSP	96 OSP 1157	Margaret Martin Roberts	North Carolina Department of Co	1/26/98
OSP	96 OSP 2008	Elizabeth Rouse Mosley	North Carolina Department of Ju	3/26/98
OSP	97 OSP 0531	Charles F Fields	N.C. Department of Human Res	3/25/98
OSP	97 OSP 0595	Shirlene R. Boone	Hertford County Department of S	4/6/98
OSP	97 OSP 0598	Anne K. Brock	North Carolina Department of Hu	5/22/98
OSP	97 OSP 0733	Theon Shan	Caswell Center	4/29/98
OSP	97 OSP 0760	Richard G. Steeves	Scotland County Board of Health	3/6/98
OSP	97 OSP 0862	Roy Hudson	Department of Human Resource	8/13/98
OSP	97 OSP 0863	Yolandra Best and	John Umstead Hospital	8/13/98
OSP	97 OSP 0998	Bernie B. Kelly	Harry Chambers	2/3/98
OSP	97 OSP 1161	Lisa R. Wilson	Cabarrus County Dept. of Social	3/20/98

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
OSP	98 OSP 0050	Leon Owens	North Carolina Department of Co	7/10/98
OSP	98 OSP 0231	Michael A. Smith	N. C. Department of Correction	8/11/98
OSP	98 OSP 0317	Michael A. Smith	Department of Corrections	8/11/98

AGENCIES THAT ARE EXEMPT FROM THE ARTICLE 3 CONTESTED CASE PROVISIONS

AGENCIES HAVING FULL EXEMPTIONS FROM THE APA, *INCLUDING* ARTICLE 3 CONTESTED CASES

- The NC National Guard in exercising it court-martial jurisdiction. *(G.S. 150B-1(c)(1))*
- DHHS in exercising its authority over Camp Butner. *(G.S. 150B-1(c)(2))*
- The Utilities Commission. *(G.S. 150B-1(c)(3))*
- The Industrial Commission. *(G.S. 150B-1(c)(4))*
- The Employment Security Commission. *(G.S. 150B-1(c)(5))*
- The University of NC, except for Article 4, Judicial Review. *(G.S. 150B-1(f))*
- The NC Tobacco Research Commission. *(G.S. 106-568.8)*
- Local boards of trustees for community colleges. *(G.S. 115D-80)*
- State departments, institutions and commissions with regard to rules for the selection and retention of law-enforcement officers. *(G.S. 143-166.40)*
- The Department of Administration, State Property Office, in granting certain easements where approval is not required by the Governor or the Council of State. *(G.S. 146-12(i))*
- The State Board of Elections with regard to precinct boundaries. *(G.S. 163-132.5B)*

AGENCIES EXEMPT FROM ARTICLE 3 CONCERNING CONTESTED CASES

- DHHS and DENR in complying with procedural safeguards in the federal Education of the Handicapped Act Amendments of 1986. *(G.S. 150B-1(e)(1))*
- NC Low-Level Radioactive Waste Management Authority. *(G.S. 150B-1(e)(3))*
- NC Hazardous Waste Management Commission. *(G.S. 150B-1(e)(4))*
- Hearings required pursuant to the Rehabilitation Act of 1973. *(G.S. 150B-1(e)(5))*
- The Department of Revenue. *(G.S. 150B-1(e)(6))*
- The Department of Correction. *(G.S. 150B-1(e)(7))*
- The Department of Transportation, except for G.S. 136-29, regarding adjustment and resolution of highway contract claim. *(G.S. 150B-1(e)(8))*
- OSHA Review Board. *(G.S. 150B-1(e)(9))*
- NC Global TransPark Authority with respect to the acquisition, construction, operation or use, including fees or charges, of any portion of a cargo airport complex. *(G.S. 150B-1(e)(11))*
- DHHS hearings regarding eligibility and provision of services for eligible assaultive and violent children. *(G.S. 150B-1(e)(11))*
- Proclamations issued by the Marine Fisheries Director pursuant to G.S. 113-221(e). *(G.S. 113-221(e1))*
- Decisions of the Standard Commercial Fishing (SCFL) Eligibility Board regarding whether or not an applicant is eligible to receive a SCFL. *(S.L. 1998-225, Sec. 4.24)*

AGENCIES THAT ARE EXEMPT FROM THE ARTICLE 3 CONTESTED CASE PROVISIONS

AGENCIES HAVING FULL EXEMPTIONS FROM THE APA, *INCLUDING* ARTICLE 3 CONTESTED CASES

- The NC National Guard in exercising it court-martial jurisdiction. *(G.S. 150B-1(c)(1))*
- DHHS in exercising its authority over Camp Butner. *(G.S. 150B-1(c)(2))*
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- The Industrial Commission. *(G.S. 150B-1(c)(4))*
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- State departments, institutions and commissions with regard to rules for the selection and retention of law-enforcement officers. *(G.S. 143-166.40)*
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- Hearings required pursuant to the Rehabilitation Act of 1973. *(G.S. 150B-1(e)(5))*
- The Department of Revenue. *(G.S. 150B-1(e)(6))*
- The Department of Correction. *(G.S. 150B-1(e)(7))*
- The Department of Transportation, except for G.S. 136-29, regarding adjustment and resolution of highway contract claim. *(G.S. 150B-1(e)(8))*
- OSHA Review Board. *(G.S. 150B-1(e)(9))*
- NC Global TransPark Authority with respect to the acquisition, construction, operation or use, including fees or charges, of any portion of a cargo airport complex. *(G.S. 150B-1(e)(11))*
- DHHS hearings regarding eligibility and provision of services for eligible assaultive and violent children. *(G.S. 150B-1(e)(11))*
- Proclamations issued by the Marine Fisheries Director pursuant to G.S. 113-221(e). *(G.S. 113-221(e1))*
- Decisions of the Standard Commercial Fishing (SCFL) Eligibility Board regarding whether or not an applicant is eligible to receive a SCFL. *(S.L. 1998-225, Sec. 4.24)*

HB 968 would NOT include agencies under Art. 3A, including Occupational Licensing Bds., Dept of Insurance, State Banking Commission

OFFICE OF ADMINISTRATIVE HEARINGS (OAH)
Creation and Purpose

CREATION: OAH is created under Article 60 of Chapter 7A of the General Statutes as an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution, and in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be necessary to accomplish the purposes for which it was created.

- PURPOSE: OAH was established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process.

- DUTIES: One of OAH's primary duties is to conduct contested case hearings under Article 3 of Chapter 150B, the Administrative Procedure Act. In most cases, OAH makes a recommended decision to the agency, and the agency has the final decision making authority.

ARGUMENTS FOR AND AGAINST GIVING OAH FINAL DECISION-MAKING AUTHORITY[1]

AGAINST

- Transfers final decision-making authority actions from the executive branch to a legislatively created, quasi-judicial agency.
  Shifts decision-making authority from policy makers and experts in the field to administrative law judges who may have no experience in the subject which may result in negative implications to the State's finances, environment, and commerce.
- Does not allow for consistent application of policy, i.e., different ALJ's may reach directly opposite conclusions on essentially the same issue.
- Gives OAH de facto final decision-making authority in contested cases which may have constitutional implications.
- May force the agencies to develop their own hearing officer process to develop a record more fully, add another layer of internal review, and complicate decision-making.

FOR

- Enhances the integrity of the impartial fact finders - ALJ's.
- Benefits citizens by ensuring that State agencies act in a fair, reasonable and responsible manner towards citizens, including patients and residents in regulated facilities.
- Places fact finding and the assessment of credibility in hands of unbiased, trained ALJ's.
- Ensures that rules are applied uniformly.
- Makes it more difficult for agencies to continue to overturn ALJ findings that support decisions favorable to citizens.

[1] Taken from information provided in support of and against HB 515 (Hartsell amendment) in 1997, and HB 1317, Amend Contested Case Provisions, Rep. C. Wilson, 1998 session.

Prepared by: Mary Shuping
Research Division
April 13, 1999

CONTESTED CASES UNDER CHAPTER 150B - ADMINISTRATIVE PROCEDURE ACT

OAH HAS THE FINAL DECISION-MAKING AUTHORITY FOR CONTESTED CASES INVOLVING

- Equal employment opportunity issues under the federal Civil Rights Act of 1964. *(G.S. 7A-759)*

- Disagreements regarding the designation of students as academically or intellectually gifted. *(G.S. 115C-150.8)*

CONTESTED CASES UNDER ARTICLE 3 OF THE APA

- Unless specifically exempted, most agencies are subject to Article 3 of Chapter 150B regarding contested cases. *(See Attachment A for a list of exempt agencies.)*

- Generally, contested cases are filed against an agency, heard by an administrative law judge in the Office of Administrative Hearings who makes a *recommended decision*, and the *agency makes the final decision.* *(See Attachment B for flow chart and Attachment C for statistics on final agency decisions.)*

CONTESTED CASES UNDER ARTICLE 3A OF THE APA

- The following agencies' contested cases are conducted under Article 3A of Chapter 150B:
    - Occupational licensing agencies.
    - State Banking Commission, Commissioner of Banks, Savings Institutions Division and Credit Union Division of the Department of Commerce.
    - Department of Insurance and the Commissioner of Insurance.

- Contested case hearings under Article 3A are *conducted by the agency*, and therefore, are *not* conducted by the Office of Administrative Hearings unless requested by the agency.

- The agency has many of the same powers and duties as an administrative law judge in conducting the hearing.

Prepared by: Mary Shuping
Research Division
April 12, 1999

AGENCIES THAT ARE EXEMPT FROM THE ARTICLE 3 CONTESTED CASE PROVISIONS

AGENCIES HAVING FULL EXEMPTIONS FROM THE APA, *INCLUDING* ARTICLE 3 CONTESTED CASES

- The NC National Guard in exercising it court-martial jurisdiction. *(G.S. 150B-1(c)(1))*
- DHHS in exercising its authority over Camp Butner. *(G.S. 150B-1(c)(2))*
- The Utilities Commission. *(G.S. 150B-1(c)(3))*
- The Industrial Commission. *(G.S. 150B-1(c)(4))*
- The Employment Security Commission. *(G.S. 150B-1(c)(5))*
- The University of NC, except for Article 4, Judicial Review. *(G.S. 150B-1(f))*
- The NC Tobacco Research Commission. *(G.S. 106-568.8)*
- Local boards of trustees for community colleges. *(G.S. 115D-80)*
- State departments, institutions and commissions with regard to rules for the selection and retention of law-enforcement officers. *(G.S. 143-166.40)*
- The Department of Administration, State Property Office, in granting certain easements where approval is not required by the Governor or the Council of State. *(G.S. 146-12(i))*
- The State Board of Elections with regard to precinct boundaries. *(G.S. 163-132.5B)*

AGENCIES EXEMPT FROM ARTICLE 3 CONCERNING CONTESTED CASES

- DHHS and DENR in complying with procedural safeguards in the federal Education of the Handicapped Act Amendments of 1986. *(G.S. 150B-1(e)(1))*
- NC Low-Level Radioactive Waste Management Authority. *(G.S. 150B-1(e)(3))*
- NC Hazardous Waste Management Commission. *(G.S. 150B-1(e)(4))*
- Hearings required pursuant to the Rehabilitation Act of 1973. *(G.S. 150B-1(e)(5))*
- The Department of Revenue. *(G.S. 150B-1(e)(6))*
- The Department of Correction. *(G.S. 150B-1(e)(7))*
- The Department of Transportation, except for G.S. 136-29, regarding adjustment and resolution of highway contract claim. *(G.S. 150B-1(e)(8))*
- OSHA Review Board. *(G.S. 150B-1(e)(9))*
- NC Global TransPark Authority with respect to the acquisition, construction, operation or use, including fees or charges, of any portion of a cargo airport complex. *(G.S. 150B-1(e)(11))*
- DHHS hearings regarding eligibility and provision of services for eligible assaultive and violent children. *(G.S. 150B-1(e)(11))*
- Proclamations issued by the Marine Fisheries Director pursuant to G.S. 113-221(e). *(G.S. 113-221(e1))*
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House Committee
on
Ways and Means

Minutes
April 21, 1999

The House Ways & Means Committee met Wednesday, April 21, 1999 at 1:00 p.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Bob Hensley to continue explaining **HB 820 (Voluntary Shared Leave)** which had been carried over from the morning meeting. He distributed a proposed committee substitute bill to the committee and Rep. McCombs moved for its adoption. The motion passed.

Rep. Buchanan moved to give the new committee substitute a favorable report, unfavorable to the original bill. The motion passed.

Rep. Cary Allred to explain **HB 454 (Simplify Bid Process/Capital Project).**

He said the bill provides that a county, city or local school administrative unit may, after proper advertisement for bids, award a construction contract of $500,000 or less with only two competitive bids instead of three bids as required for other contracts. If fewer than two bids are received, the county, city or local school board must re-advertise for bids. If the second advertisement results in only one bid, the contract may be awarded to that bidder. While the bill is a statewide bill, he said he wouldn't object to it being amended to be a local bill only.

Rep. Teague, co-sponsor, was recognized and endorsed the bill.

Discussion followed. Jim Blackburn with the County Commissioners' Association supported the bill, as did Leanne Winner, with the NC School Boards Association, and Tim Kent with the American Institute of Architects.

Dave Simpson with the Carolina Contractors Association opposed the bill. He said it chips away at the open-competition bidding system. Rep. Cox said he thought it was a bad bill. North Carolina has rules in place that are working. This patchwork approach would not be a good thing. Rep. Gibson suggested doing this on a local basis only. Rep. Owens said he strongly supported the bill.

Rep. Buchanan moved to give the bill a favorable report.

Rep. McCombs moved to amend the bill and his motion passed.

More discussion followed and the bill was temporarily displaced.

Rep. Goodwin was recognized to continue his explanation of **HB 942 (Protect Child Performers)**. He presented a committee substitute to the Members and Rep. Buchanan moved for its adoption. The motion passed. He said the bill addressed an issue that many did not know existed, that of protecting child performers and that most people didn't know that child actors are exempt from the Federal Child Labor Laws.

Rep. Goodwin said the original bill was an omnibus bill that aggressively attempted to establish protective workplace guidelines for children in the entertainment industry. Due to concerns from the film industry and the Department of Commerce, however, all the controversial issues in the original bill will be referred to a study commission.

Rep. Goodwin introduced Paul Petersen, President of "A Minor Consideration" to address the Committee. Mr. Petersen's remarks are attached to these Minutes as **Attachment I.**

Upon conclusion of his remarks, the Chairman recognized Kathryn Sawyer from the Department of Commerce. On behalf of the North Carolina Film industry she advised the Committee to be cautious before supporting this legislation. The Department, she continues, did support provisions for protecting the child actor's money.

Rep. Redwine proposed two amendments to the bill and these were adopted. **(See Attachments II and III).**

Rep. Gibson said he had been involved in the film industry for some time and he has never seen a child abused. Rep. Starnes wanted to hear more from the film industry.

Kathryn Sawyer from the Department of Commerce responded that the Department fully supported the Screen Actors Guild, but because North Carolina is a "right to work state," anything beyond those guidelines may have a chilling effect on the industry.

Considerable discussion followed on the issue of contracts and whether or not the bill applied to children coming into the state to perform.

The bill was carried over.

The Committee adjourned at 3:00 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 21, 1999
1:00 a.m.

1:00 p.m. Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 942 Protect Child Performers **(Goodwin)**

***Carried over from 4/21/99 10:00 Meeting*:**

HB 471 Stokesdale/Summerfield Zoning ***(Decker)***
HB 454 Simplify Bid Process/Cap. Proj. **(Allred)**
HB 467 Use of School Buses/US Open **(Morgan)**
HB 820 Voluntary Shared Leave **(Hensley)**
Action taken from 10:00 a.m. meeting:
Motion for a favorable report - Rep. Mosley
HB 278 TANF Separation Noncharged **(Redwine)**

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H820-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 820
THIS IS A DRAFT 21-APR-99 11:41:17
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Voluntary Shared Leave. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT STATE EMPLOYEES AND PUBLIC SCHOOL EMPLOYEES MAY SHARE LEAVE VOLUNTARILY.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-8.3. Voluntary shared leave.**

The State Personnel Commission, in cooperation with the State Board of Education, shall adopt rules and policies to allow any employee at a state agency to share leave voluntarily with an immediate family member who is an employee of a state agency or public school. For the purposes of this section, the term 'immediate family member' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships."

Section 2. Article 2 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-12.2. Voluntary shared leave.**

The State Board of Education, in cooperation with the State Personnel Commission, shall adopt rules and policies to allow any

employee at a public school to share leave voluntarily with an immediate family member who is an employee of a public school or state agency. For the purposes of this section, the term 'immediate family member' means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 454

Short Title: Simplify Bid Process/Capital Proj. (Public)

Sponsors: Representatives Allred, Teague; Baker, Buchanan, Justus, Melton, Setzer, Thompson, Tucker, and Walend.

Referred to: Ways and Means.

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COMPETITIVE BID PROCESS FOR CITY, COUNTY, AND PUBLIC SCHOOL PROJECTS OF FIVE HUNDRED THOUSAND DOLLARS OR LESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-132 reads as rewritten:

"**§ 143-132. Minimum number of bids for public contracts.**

(a) ~~No~~ Except as provided in subsection (b1) of this section, no contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(c) or (d), each single-prime bid

shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(b1) When the entire cost of construction or repairs is five hundred thousand dollars ($500,000) or less, a county, city as defined in G.S. 160A-1(2), or local school administrative unit may award a contract if at least two competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor. If after advertisement for bids as required by G.S. 143-129, fewer than two such competitive bids have been received, the governing body of the county, city, or local board of education shall again advertise for bids. If as a result of the second advertisement, only one such competitive bid is received from a responsible bidder, the governing body may let the contract to that bidder.

For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts pursuant to G.S. 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of this subsection. If there are at least two single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991, governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes."

Section 2. This act becomes effective July 1, 1999, and applies to projects advertised on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 454 DATE 4-21-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE NO

(Rep.) Sen.) Eugene McCombs

1 moves to amend the bill on page 2, lines 22-23
2 ( ) WHICH CHANGES THE TITLE
3 by re-writing the lines to read:
4 "(c) The State Building Commission shall develop
5 guidelines ~~no later than January 1, 1991,~~ governing
6 the opening of bids pursuant to this Article.
7 These guidelines shall".
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 454:
Simplify Bid Process/Capital Proj.

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Allred
Date:	April 20, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 454 provides that a county, city, or local school administrative unit may, after proper advertisement for bids, award a construction contract of $500,000 or less with only two competitive bids instead of three bids as required for other contracts. If fewer than two bids are received, the county, city or local school board must readvertise for bids. If the second advertisement results in only one bid, the contract may be awarded to that bidder.

CURRENT LAW: Current law requires that, with certain exceptions, the State or any subdivision thereof shall not award contracts for construction or repairs unless at least three competitive bids are received. If, after advertisement for bids, fewer than three bids are received, the State or subdivision of the State must advertise again. If, after the second advertisement, fewer than three bids are received, the contract may be awarded with only one bid.

As summarized above, House Bill 454 would create an exception to this three bid requirement for construction or repair contracts of $500,000 or less.

The bill would become effective July 1, 1999.

42199

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 942
PROPOSED COMMITTEE SUBSTITUTE H942-CSSB-002
09:48:23 EZT / 21-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Protect Child Performers. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT YOUTHS IN THE ENTERTAINMENT INDUSTRY AND OTHER HIGH-EARNING MINORS AND TO STUDY ADDITIONAL PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.2 is amended by adding a new subdivision to read:

"(5a) 'Entertainment industry' means motion pictures or theatrical productions, or radio or television productions."

Section 2. G.S. 95-25.5(g) is repealed.

Section 3. G.S. 95-25.5 is amended by adding a new subsection to read:

"(g1) Youths employed as actors, models, or performers in the entertainment industry are exempt from all provisions of this section except that the following standards for physically dangerous activity and infants shall apply with regard to any employment of a youth in the entertainment industry:

(1) The youth's parent or guardian shall provide the employer a certificate signed by a doctor licensed to practice medicine with the state in which the

youth resides or is employed stating that the youth has been examined within six months before the date the youth was engaged by the employer and has been found to be physically fit.

(2) Before the youth's first call, the employer shall obtain the written consent of the youth's parent or legal guardian for medical care in the case of an emergency. If the parent or legal guardian, however, refuses to provide that consent because of religious convictions, the employer shall at least obtain written consent for external emergency aid, provided that the obtaining of that consent is not contrary to those religious convictions.

(3) No youth shall be required to work in a situation that places that youth in clear and present danger to life and limb. If the youth believes the youth would be in such danger, the youth shall have the opportunity to discuss the situation with the youth's parent or legal guardian. If the youth persists in the belief, regardless of its validity, the youth shall not be required to perform in the situation.

(4) When a youth is asked to perform physical, athletic, or acrobatic activity of an extraordinary nature, the youth's parent or guardian shall first be advised of the activity and shall represent that the youth is fully capable of performing the activity. The employer shall comply with reasonable requests for equipment that may be needed for safety reasons.

(5) Infants younger than one year old shall be full-term births, shall be full-weight infants, and shall not be employed sooner than 15 days after birth. An infant's parent or guardian shall provide the employer a certificate signed by a doctor licensed to practice medicine with the state in which the infant was born or is employed stating that the infant has been found to be a full-term birth and a full-weight infant."

Section 4. G.S. 95-25.5(k) reads as rewritten:

"(k) Persons and establishments required to comply with or subject to regulation of child labor under the Fair Labor Standards Act are exempt from all provisions of this section, except the certificate requirements of subsection (a), the

provisions of subsection (a1), the prohibition from occupations found and declared to be detrimental by the Commissioner of Labor pursuant to subsection (b), ~~and~~ the prohibitions of subsection ~~(j).~~ (j), and the provisions of subsection (g1). In addition, employment certificates will not be issued if such person's employment will be in violation of the applicable child labor provisions of the Fair Labor Standards Act. Such employers may also be assessed civil penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any regulation issued hereunder from which there is no exemption."

Section 5. Subchapter II of Chapter 35A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Court-Approved Contracts for High-Earning Minors.

"§ 35A-1229.1. Judicial approval.

(a) What Contracts the Court May Approve. -- A contract made by a minor or made by a parent or guardian of a minor, or a contract proposed to be so made, may be approved by a judge of the district court, where the minor is a resident of this State or the services of the minor are to be performed or rendered in this State, where the contract sought to be approved or made subject to approval is one under which:

(1) The minor is to perform or render artistic or creative services, including, but not limited to, services as an actor, actress, dancer, musician, vocalist, model, stunt person, conductor, or other performing artist.

(2) The minor is to render services as a participant in professional athletics or semiprofessional athletics, including, but not limited to, track and field, surfing, sailing, diving, boxing, gymnastics, ice skating, wrestling, bicycling, soccer, horse racing, motocross, softball, baseball, football, hockey, basketball, tennis, golf, and jai alai.

(3) The minor will endorse a product or service, or in any way receive compensation for the use of right of publicity of the minor.

(4) The minor agrees to purchase, sell, lease, license, transfer, or otherwise exploit literary, musical, or dramatic properties, whether tangible or intangible, or any rights therein for use in motion pictures, television, the production of recordings,

the legitimate or living stage, or otherwise in the entertainment field.

(5) A person is employed to receive compensation from the minor for services to the minor in connection with such performing or athletic services of the minor as a coach, manager, agent, trainer, or to otherwise represent or advise the minor in connection contracts to do so.

(6) The minor would receive gross earnings in excess of seven thousand five hundred dollars ($7,500).

(b) Approval for Existing Contract. -- Approval under this section may be sought for a contract or agreement that is already in existence and under which the parties are currently performing.

(c) Legal Status of Approved Contract by Minor. -- If a contract described in subsection (a) is approved by the district court pursuant to the requirements of this Article, the minor may not, either during that minor's minority or upon reaching majority, disaffirm the contract on the ground of minority or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended, or assigned after its approval under this section shall be deemed a new contract. If a contract described by subsection (a) is so approved, all earnings, royalties, or other compensation earned or received by the minor pursuant to the approved contract shall become the property of the minor, subject to the provisions of G.S. 35A-1229.2 and G.S. 35A-1229.3.

(d) Limitations.

(1) Approval of the contract pursuant to this section shall not exempt any person from any other law with respect to licenses, consents, or authorizations required for any conduct, employment, use, or exhibition of the minor in this State, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of such requirements, nor dispense with any other requirement of law relating to the minor.

(2) Approval of a contract pursuant to this section does not remove the disability of nonage for any other contract with the same minor if that contract is not approved by the court pursuant to this section, nor is the disability of nonage removed generally for the minor, nor is the minor

emancipated for any purpose or contract other than the performance of contracts approved pursuant to this section.

(3) No contract shall be approved that provides for an employment, use, or exhibition of the minor, within or without the State, which is prohibited by law and in particular by any federal or State child labor law, and could not be licensed to take place in this State.

(4) No contract shall be approved by the court unless:

a. A written acquiescence to the contract by the parent or parents having custody, or other person having custody of the minor, is filed in the proceeding;

b. Written approval is given by the guardian ad litem appointed by the court in this proceeding; or

c. The court finds that the minor is emancipated.

(5) No contract shall be approved if the term during which the minor is to perform or render services or during which a person is employed to render services to the minor, including any extensions thereof by option or otherwise, extends for a period of more than three years from the date or approval of the contract. If the contract contains any other covenant or condition which extends beyond three years, the contract may be approved if found to be reasonable and for such period as the court may determine.

(6) If the court that has approved a contract pursuant to this section shall find that the physical or mental well-being of the minor is being impaired by the performance of the contract or that the contract is in violation of any child labor law, the court may, at any time during the term of the contract during which services are to be performed by the minor or rendered by or to the minor or during the term of any other covenant or condition of the contract, either revoke its approval of the contract or declare such approval revoked unless a modification of the contract which the court finds to be appropriate in the circumstances is approved by order of the court. Application for an order pursuant to this subdivision may be made by the

minor, by that minor's parent or parents or guardian, by a guardian ad litem appointed for the purpose by the court on its own motion, or by the Commissioner of Labor. The order granting or denying the application shall be made after hearing, upon notice to the parties to the proceeding in which the contract was approved, given in the manner the court directs. Revocation of the approval of the contract shall not affect any right of action existing at the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the well-being of the minor was justified.

"§ 35A-1229.2. Procedure for court approval of contract; appointment of guardian ad litem.

(a) Who May Commence a Proceeding. -- A proceeding for approval of a contract described by G.S. 35A-1229.1 shall be commenced by verified petition by:

(1) Either natural parent of the minor, or other person having custody of the minor;

(2) A guardian of estate or property of the minor;

(3) The minor;

(4) Any party to the contract sought to be approved; or

(5) Any other interested person.

(b) Where a Proceeding May be Commenced. -- If a guardian of the estate or person has been appointed and qualified in this State, the petition shall be made to the district court in the district in which the guardian of the estate or person was appointed or in which that guardian qualified. If there is no such guardian, the petition shall be filed with the district court in the district having guardianship jurisdiction, in the district where the minor resides, or if the minor is not a resident of this State, in any county in which the minor is to be employed under the contract.

(c) Who Shall Be Notified. -- The following persons, other than one who is the petitioner or who joins in the petition, shall be served with the petition by formal notice as provided by North Carolina Probate Rules:

(1) The minor, if over the age of 14 years;

(2) The minor's guardian, if any, whether or not appointed or qualified in this State;

(3) Each party to the contract;

(4) The parents of the minor;

(5) Any person having care or custody of the minor;
(6) The person with whom the minor resides, if other than a parent or guardian; and
(7) The Commissioner of Labor.

(d) Timing of Notice. -- Formal notice shall be made at least 30 days before the time at which the petition is set to be heard, unless the court shall fix a shorter time upon cause shown.

(e) Contents of Petition. -- The petition shall have annexed a complete copy of the contract or proposed contract and shall set forth:

(1) The full name, residence, and date of birth of the minor.
(2) The name and residence of any living parent of the minor, the name and residence of the person who has care and custody of the minor, and the name and residence of the person with whom the minor resides.
(3) Whether the minor is a resident of the State or, if the minor is not a resident, that the petition is for approval of a contract or to make a contract subject to court approval for performance or rendering of services by the minor and the place in the State where the services are to be performed or rendered.
(4) The brief statement as to the minor's employment and compensation under the contract or proposed contract.
(5) The statement that the term of the contract during which the minor is to perform or render services or during which a person is employed to render services to the minor can in no event extend for a period of more than three years from the date of the approval of the contract.
(6) An enumeration of any other covenants or conditions contained in the contract which extend beyond the three years or a statement that the contract contains no such other covenants or conditions.
(7) A schedule showing the minor's estimated gross earnings, estimated outlays, and estimated net earnings as defined in G.S. 35A-1229.3.
(8) The interest of the petitioner in the contract or proposed contract or in the minor's performance under it.

(9) Other facts known by the petitioner regarding the minor and the minor's family that show whether or not the contract is reasonable and provident and for the best interests of the minor, including whether the minor has had at any time a guardian appointed by the court of any jurisdiction, and the facts with respect to any previous application for the relief sought or whether similar relief has been sought with respect to the minor.

(f) Appointment of Guardian Ad Litem. -- At any time after the filing of the petition, the court, if it deems it advisable, may appoint a guardian ad litem, pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure, to represent the interests of the minor. The court shall appoint a guardian ad litem as to any contract where the parent or guardian will receive remuneration or financial gain from the performance of the contract or has any other conflict of interest with the minor. The court, in determining whether to appoint a guardian ad litem, may consider the following criteria:

(1) The length of time the exclusive services of the minor are required.

(2) Whether the gross earnings of the minor under the contract are either contingent or unknown.

(3) Whether the gross earnings of the minor under the contract are in excess of seven thousand five hundred dollars ($7,500).

(g) Compensation for Guardian Ad Litem. -- The guardian ad litem shall be entitled to reasonable compensation. The court shall have the power to determine the amount of the reasonable compensation paid to the guardian ad litem and may determine which party shall be responsible for the fee, whether the fee shall be paid from the earnings of the minor pursuant to the contract sought to be approved, or may apportion the fee between the parties to the proceedings.

(h) Attendance by Minor. -- The minor, unless excused by the court for good cause shown, shall attend personally before the court upon the hearing of the petition.

(i) Disposition of the Hearing. -- The court may, by order:

(1) Determine any issue arising from the proceedings or proof and required to be determined for final disposition of the matter, including issues with respect to the age or emancipation of the minor.

(2) Approve or disapprove the contract or proposed contract.

(3) Approve the contract upon such conditions, with respect to modification of the terms thereof or otherwise, as it shall determine.

(4) Appoint a guardian of the estate as provided by Article 6 of this Chapter to hold the earnings of the minor.

"§ 35A-1229.3. Guardianship of the estate.

(a) Guardianship Plan as Condition for Approval of Contract. -- The court may withhold its approval of the contract sought to be approved under G.S. 35A-1229.1 and G.S. 35A-1229.2 until the filing of a guardianship plan by the parents or legal guardian of the minor, which shall provide that a part of the minor's net earnings for services performed or rendered during the term of the contract be set aside and saved for the minor under a guardianship of the estate as provided in this section, until the minor attains majority or until further order of the court.

(b) Amount to Be Set Aside. -- The court shall fix the amount or proportion to be set aside as it deems for the best interests of the minor, and the amount or proportion so fixed may, upon subsequent application, be modified in the discretion of the court, within the limits of the consent given at the time the contract was approved. In fixing the amount or proportion, the court shall give consideration to financial circumstances of the parent of the minor and to the needs of their other children or, if the minor has any dependents, to the needs of the minor's family. If the minor has no dependents, then the court shall not require the setting aside of an amount or proportion in excess of two-thirds of the net earnings of the minor.

(c) Definition of 'Net Earnings.' -- For the purposes of this Article, 'net earnings' means the gross earnings received for services performed or rendered by the minor during the term of the contract, less:

(1) All sums required by law to be paid as taxes to any government or subdivision thereof with respect to or by reason of such earnings.

(2) Reasonable sums to be expended for the support, care, education, coaching, training, and professional management of the minor.

(3) Reasonable fees and expenses paid or to be paid in connection with the proceeding for approval, the contract, and its performance.

(d) Protection for Creditors of Others. -- Notwithstanding anything set forth in this Article, the creditors of any person,

other than creditors of the minor, shall not be entitled to the earnings of the minor.

(e) Appointment of Guardian of the Estate. -- If a guardian of the estate of the minor has been appointed or qualified in this State, that guardian shall receive and hold any net earnings directed by the court to be set aside for the minor as provided by subsection (a) of this section and by Article 6 regarding guardians of the estate. In any other case, a guardian of the estate shall be appointed as provided by Article 6 of this Chapter for the purpose of holding the net earnings of the minor pursuant to the contract as directed by the court pursuant to subsection (a) of this section and thereafter shall hold said earnings as a guardian of the estate.

(f) Disclosure of Interest. -- A parent, guardian, or other petitioner is not ineligible to be appointed as guardian of the estate or earnings of a minor derived from a contract approved pursuant to this Article by reason of that person's interest in any part of the minor's earnings under the contract or proposed contract or by reason of the fact that that person is a party to or is otherwise interested in the contract or in the minor's performance under the contract, provided that interest is fully disclosed to the court."

Section 6. The Legislative Research Commission shall study the need of youths employed in the entertainment industry for protection. It shall study how to adapt the unusual circumstances of youth employment in the entertainment industry to the needs youths have for normal educational, parenting, and social experiences. It shall study the proper role of State and local agencies, the schools, parents, employers, the courts, and the youths themselves in achieving the proper adaptation. The Legislative Research Commission shall reports its findings and recommendations to the 2000 session of the 1999 General Assembly or to the 2001 General Assembly, or to both.

Section 7. Section 6 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000.

Attachment I

April 17, 1999

REMARKS FOR TESTIMONY ON
HB-942
April 21st, 1999
by
Paul Petersen, President
"A Minor Consideration"

Thank you, Mr. Chairman, and members of the Committee, for allowing me to speak in favor of Representative Goodwin's Bill, HB-942, the first-ever set of laws to govern the workplace for minors in the entertainment industry here in North Carolina.

First, to the reasons behind the need for this new set of Laws. North Carolina can be proud of the fact that it is now the 4th largest entertainment production center in the United States. I assure you, nothing in HB-942 will stand in the way of this phenomenal growth. This Bill is not about Unions, or right-to-work, or the ability to compete in the business of attracting film and television production which we all know to be a cut-throat enterprise. This is about children.

Way back in 1938 when the Fair Labor Standards Act was passed in Congress two *exemptions* were granted to those national standards...One to kids who delivered newspapers, and the Second, to the children who performed in the Entertainment Industry. Let me repeat that. Kids who work in the Entertainment Business are *exempt* from the national labor standards under which all other people labor who draw a paycheck. The Entertainment Industry now includes Big Time Sports...and we all know how many children are involved in Sports...many with aspirations toward International competition, and even more with an eye to a collegiate career, and then the huge money in professional sports.

In the vacuum of applicable Law, individual States were encouraged to make up their own rules for professional children. California first adopted laws for kids in show business way back in 1920...which was only right since the bulk of the entertainment business was in the process of moving to Hollywood. But it is now a different world. Production can and has taken place all over the world.

We are here today to make sure that whatever competitive advantage North Carolina has over other production centers it does not solicit and win these high-paying, glamorous jobs on the backs of children.

Let's not kid ourselves. Kids ARE now and have ALWAYS BEEN, part of the Entertainment Industry going all the way back to Mary Pickford, Lillian Gish and Jackie Coogan. Moreover, movies and television today are directly marketed at children as anyone with a toddler who watches Barney or Sesame Street knows. Kids are an enormous market. The new marketing cry today is "Tweens," and if you are wondering what a "Tween" is, let me explain that it is a child with 16 billion dollars of disposable income between the ages of 8 and 12 years old.

The quickest route to a kid's wallet is through the use of other children...as Spokespersons, or as a Character...or the so-called "child star." If you have adolescents at home you will know the names, LeeAnn Grimes, Brittany Spears, N'Sync and Backstreet Boys. I am not telling you something you don't already know.

For those of you who think production decisions are NOT made with an eye to existing Child Labor Laws, let me tell you of the recent experience of our neighbors...some would say, 'Nemesis'...to the North, British Columbia, one of Ten Provinces of Canada. Vancouver, British Columbia created quite a film industry in the span of twenty years...and on October 10th, 19-**97** that province finally adopted some basic Child Labor Laws, limiting hours and making certain a portion of their kids' income was set-aside. In the span of a year British Columbia saw an outflow of production to other Canadian provinces where there were **no** Child Labor Laws...companies literally fled to Toronto, Ontario, to Montreal, Quebec, to Saskatchewan and the Maritimes.

The reasons are manifest...if you understand the realities of production. A child who is a featured player can only give the production company 8 and ½ hours as is the case in California today, and on school days that time must include 3 hours of school. If that child is heavily involved in that day's filming it doesn't take a genius to grasp the significant monetary difference if that child can stay 12 hours, fourteen hours or more. What's scary is that even in California we have plenty of proof that kids are working sixteen and seventeen hour days...because the parents not only allow it, but are often paid under the table to encourage the practice...and since it is illegal to work a child those kinds of hours that overtime is just not compensated.

I am accusing no one of doing that here in North Carolina. In fact, it is an operating principle of "A Minor Consideration" that we never seek **Retribution**. We, the 485 former child stars who make up "A Minor Consideration," are here to seek **Solution.** No one can give us back out childhood...or compensate those of us whose parents took every dime we earned and left us with nothing. Ask Dominique Moceanu what it's like to earn four million dollars and own nothing except what her parents are willing to give her when she turns 35...if there is anything left at all.

The well-known "Coogan Law," people think, protects all kids in Show Business. It's a myth. The Coogan Law exists only in California, has paler versions in Massachusetts and New York, and another version in Florida. And the reason California has a Coogan Law at all is not to protect a portion of a kid's earnings...as most people believe...but to keep a kid who was stuck in a bad contract by his parents or management team from *disaffirming* that contract upon reaching the age of Majority. That's a problem that HB-942 addresses.

There is another more compelling reason to pass HB-942, and that has to do with money. Because of the old English Common Law statutes children do not own the money they earn. It belongs 100% to the parents. Let me quote the Law: "*The parents of a (working) child are entitled to its custody, income and services.*"

We are not talking digging ditches here, my friends, or slopping hogs or milking cows on the family farm. We are talking about children, right here in North Carolina, who can make as much as $50,000.00 for one day's work on a commercial filmed in North Carolina. A kid who will not own a single red cent of that money.

That's just flat wrong. It's un-American.

It is the child who wins the audition, learns the lines, hits the marks, makes the impression. It is the child who is recognized in the supermarket. And it is the child, I'm here to tell you, who will live with the image they created for the rest of the their life.

And they don't own the money?! HB-942 will end this indefensible absurdity.

And now some features of HB-942 that will help North Carolina keep its film business, insofar as children are concerned. As I just said, "this isn't ditch-digging." But nearly all of those States which have rules for kids in show business treat 15 and 16 year olds as if they are 8 year olds. HB-942 addresses this over-looked disparity by allowing our older kids to work the longer hours they are capable of...and get paid for those hours when the day exceeds 8 ½ hours. The news rules will be age-specific, gradually allowing longer time on the set for the older kids...which, incidentally, will help minors from losing work to 18 year olds who are hired because they can work adult hours.

In terms of the requirement for a studio teacher on those days when school is in session. Doesn't everyone believe that a studio teacher is always present? The new law makes that fiction a fact. But on those non-school days the mandatory First Aid person...who is there by OSHA mandate to take care of the rest of the crew...can keep the minor's time and report violations to the Labor Department. This is not rocket science. North Carolina will have the best kid's rules in the country.

Finally, a word about this set-aside business, and the argument that this is somehow difficult for a production company and a parent to deal with. Creating a savings account for your child is no more difficult than getting a Work Permit...and there isn't a Stage Parent worth their salt who can't get a Work Permit in a New York minute. I look at it this way; if you're putting your child into the work force, the least you can do is provide a savings account. It has taken me years to get Screen Actors Guild to see it may way, and only last week was a Universal Savings Plan even offered in the California Senate. We have run the numbers, and less than Five Percent of the kids who are working in the Entertainment Business have mandatory set-asides. That's a broken promise, and it's time we fixed it...not just in California, but anywhere a kid works.

As for the paperwork and administrative costs of this additional deduction, let me tell you that the Disney Corporation, in a two year test, found it no trouble at all to insure that every kid who works for Disney...background performers, one-line, one day actor, or featured player...*every kid* has a portion of his or her

gross sent into a Trust Account, over which the parents must exercise fiduciary responsibility.

I might as well tell you what "A Minor Consideration" will be asking for of the Congress of the United States in the very near future so you can see for yourself how far we have yet to go.

The system of entertainment law that demands that an adult...either a parent or a guardian...accompany a minor into the work place, "within sight and hearing at all times," and does not provide compensation for that adult must change. There is no parallel in American Law. Imagine, being forced to work...and stage parents work, believe me...without being paid. No wonder Stage Parents all too often use their children's money. If you wonder why Stage Parents get no respect, there's your answer. They don't get paid!

At the end of every film you see which makes use of animal actors, there is a disclaimer. You've all see it. *"No animal was killed or injured in the making of this film."* What few people know is that the American Humane Association is fully-funded by the entertainment industry with equal contributions from Actors and the Producer's Alliance. The cost runs about $600,000.00 per year. The day is not far off when a similar organization, similarly funded, will be in place for the protection of children who work in the entertainment industry. The reason this is coming is the same for children as it has been for animals. No amount of law or regulation can address every issue that arises around working children. The stress of production can make even perfectly ordinary people forget that they are working in and around children. A studio teacher whose paycheck is signed the Producer may find it convenient to "forget" about the rules. That's how "Twilight Zone" happened. That's how six minors could find themselves abandoned on a set and frightened for their jobs give in to demands that they completely disrobe and be filmed in the nude with full frontal nudity as happened on "Apt Pupil" in direct contradiction of the law and thirty years of experience with nudity.

For those of you who may be thinking, "But wait. We've never had a reported instance of abuse in North Carolina. No one has ever reported a violation," I ask you to consider this: Just whom one would report a "violation" to if no law exists, if no one exercises Oversight, and there are no guidelines on even the simplest thing such as time restrictions?

What makes this Bill so remarkable, and I mean this sincerely, is that despite no obvious history of abuse here in North Carolina people of good will who know and understand the Industry as it is today have moved both the discussion and the actualization of HB-942 to this stage, this hearing. Like me, they have done so because they wish to end this conspiracy of silence that can cause such harm to children and their families.

Not so long ago the mere mention of what today is obvious to anyone who pays attention to working children would have been a ticket to oblivion. For all its power and for all its wealth, the business of making entertainment is conducted in a very narrow environment. A stage parent who complains about long hours will discover that interviews have dried up. A child who complains

that after all the work and all the money there is nothing left for college will be told it is all their fault. It is sadly true that even a State can find itself in a position of disadvantage if it tries too hard to follow basic health and safety rules...or even something as obvious as child labor laws.

It is not a level playing field out there, my friends. Movies like "Telling Lies in America" were deliberately filmed in Ohio where there are no work rules and thus it was okay to allow a fourteen year old boy to simulate oral sex with an adult woman...for a period of three days...on film...for public consumption. Some States make their show business living by lowering the bar. HB-942 is something North Carolina can be proud of. You have neighbors on all sides who do not yet have these basic protections for children. They will soon enough

If, however, your neighbors seek to exploit *their* absence of child labor laws to <u>your</u> disadvantage you have every right to call them on it...and to call me and "A Minor Consideration." There are very few useful things about vintage celebrity, especially when a lot of people think our only achievement is a line in "Trivial Pursuit." But you see, we've been there. We've paid our dues. We know how this 'kid thing' works...and more importantly, how it *doesn't.*

Working a kid excessive hours and paying off the parent to keep quiet about it is never right. Never. Calling a kid a truant in the eyes of the law when they have been working on a job that brings the State great credit cannot be correct. Telling a working person that they do not own the fruits of their own labor is a relic from the days of slavery. This industry can well-afford to insure that those children we see on-camera get their education, and we in this room can help protect their money.

But we cannot make this world a perfect place. There are consequences to life in the public eye for a child...consequences both subtle and profound. The most difficult part is to get over the denial...to stop pretending that children are born for wealth, fame and power and can sail through the glare of public life with little to fear. It doesn't work that way.

Unrestricted work weeks are not healthy for young athletes...and we know it. It is barbaric to throw children and their parents into an unregulated work environment. I tell you the rules are and must be different when parents put their children into the Game. If you doubt for even a second that parents can do damage to their own flesh-and-blood I invite you to go to a Little League field on any Saturday afternoon and watch the parents...or watch the parents in the stands at a swimming meet...or turn away from the brightly lit stage and watch the parents at a beauty pageant. Drive past an ice skating rink on your way to work and look at that line-up of seven year olds shivering in the pre-dawn darkness to get "ice time" and you'll know exactly what I'm talking about. Sit in on an open audition for that choice acting job on a national commercial and see how two hundred parents and the same number of kids can turn into monsters...for a job that pays a couple of thousand dollars...if you get it.

Somehow the fate of that one kid who gets the job makes the circumstances of the one hundred and ninety-nine losers easy to swallow...but with God as my witness I tell you...that's where the trouble starts.

It is not right now, nor has it ever been acceptable, to sacrifice education for transitory fame. It is an American belief, and it has ever been so, that the rewards of work belong first to the worker, not to their soverign. When the conditions of employment demand that a parent throw away common-sense and even a *non-existent* rule book it's time for a change, and that time has come.

Virtually everyone in America believes that when a child works in show business a portion of their income will be saved for them. Let's make it so.

Nearly all of America believes that when a kid works in this business there is a teacher on the set for school days and there is always someone to limit the time and make sure they're safe. Let's make <u>that</u> so.

When we have done that I'll ask you to join me for a march on the Internal Revenue Service which, alone among all the governmental institutions of this land, believes that a minor is solely responsible for taking care of their money...and duly reporting its condition by paying taxes.

The absurdity of taxing children is a topic for another day. I would ask your help in one last matter. I can't think of a worse time to hand a kid a pile of money than at age eighteen, can you?

PAUL PETERSEN

April 7, 1999

H 942. PROTECT CHILD PERFORMERS. *TO PROVIDE PROTECTION FOR YOUTHS IN THE ENTERTAINMENT INDUSTRY.* Adds GS 95-25.5(g1) to prohibit hiring of youths as actors, models, or performers in entertainment industry without written authorization from Dep't of Labor. In order to obtain authorization, employer (1) must ensure that studio teacher will be present when youth is working during school hours; (2) comply with studio teacher's decision to refuse to allow youth to work on set if it jeopardizes youth's health or welfare; (3) may not hire studio teacher found by Comm'r to have violated teacher's duty to youth employee; and (4) must abide by the scale of time limits (set out in statute) with compensated overtime and the standards for physically dangerous activity (set out in statute). Requires youth to acquire youth employment certificate and specifies that to be eligible for certificate infant younger than 1 year old must be full-term birth and at least 15 days old and youths between 7 and 18 must have at least a C average. Sets out duties of studio teacher to include (1) being responsible for education of youths under 18 and for health, safety and welfare of youths under 16 during scope of employment; (2) maintaining time log of hours worked by each youth; and (3) refusing to allow a youth to work on a set that jeopardizes youth's health or safety.

Adds Art. 6A to GS Ch. 35A entitled "Court-Approved Contracts for High-Earning Minors." Allows contract made by minor or by minor's parent to be approved by district court judge when minor is to perform artistic services, professional athletics, or endorse a product. If approved by the court, the minor may not disaffirm the contract or assert that parent lacked authority to make the contract. Sets out limitations on contract and sets out procedure for court approval of contract. Authorizes court to approve or disapprove the contract and to appoint a guardian of the estate to hold the earnings of the minor. Authorizes court to withhold approval until a guardianship plan is filed by parents, which shall provide that part of net earnings be set aside and saved for the minor until minor obtains majority. Effective Jan. 1, 2000.

Intro. by Goodwin.

Ref. to Ways & Means GS 95, 35A

May 13, 1999

H 942. CHILD PERFORMERS STUDY. Intro. 4/6/99. House committee substitute makes the following changes to 1st edition. Changes title to "AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED TO PROVIDE PROTECTION FOR YOUTHS IN THE ENTERTAINMENT INDUSTRY." Amends the bill to direct the Legislative Research Commission to study the need to protect youths employed in the entertainment industry and the need for court oversight of contracts for high-earning minors and the appointment of a guardian ad litem and guardian of the estate for these minors. Amendment deletes all other provisions of the bill.

ORAL TESTIMONY TO FOLLOW:
"A MINOR CONSIDERATION"
a non-profit corporation
Kid Actors,
Past & Present
Paul Petersen,
Founder & President
www.minorcon.org

REMARKS FOR TESTIMONY IN NORTH CAROLINA, April 20, 1999

Thank you, Mr. Chairman and members of the committee, for allowing me the opportunity to speak in support of HB-942. I have provided the Committee with copies of formal remarks, and in the interest of time, reduce those comments to their essence. I will be pleased to answer such questions as the members may wish to ask of me.

My name is Paul Petersen. Many of you grew up with me while I performed for eight years on "The Donna Reed Show." I am the President and Founder of "A Minor Consideration," a non-profit support group currently made up of 485 former kid stars who are dedicated to ending those difficulties which plagued so many of us young performers. We have, as a group, "been there and done that." We are all in "Trivial Pursuit."

When I tell people that children in the Entertainment Business are exempt from federal child labor laws they don't want to believe it. When I tell them that 95% of the kids who work in Entertainment are not protected by the well-known Coogan Law they find it hard to believe. When I tell them studio teachers are not mandatory in much of the work that children do in Entertainment they are astonished. When I tell them that most working kids are considered to be truant when they work in the Entertainment Industry they think that I'm making it up. When I tell them working kids do not own the money they earn they think I'm talking about pre-industrial farm families.

North Carolina can be proud of the fact that it has become the 4th largest production center in the United States. I am not here to damage your growing reputation as "Hollywood East." I am not here to prevent children from participating in Show Business...far from it. When done safely and responsibly I can tell you personally that it is an "E" ticket. I am not here to point fingers or to tell horror stories.

I am here to ask that you support the passage of some common-sense guidelines for children who work in the Entertainment Business that most people think are already in place.

I have had the good fortune of meeting some very fine people here in North Carolina, thanks to Representative Wayne Goodwin to whom I was introduced by Ms. Joanne Hill. For some my sudden appearance here was alarming...but that quickly turned to acceptance when people familiar with the entertainment business understood my mission.

I am here to ask that common-sense time limits be put on a child's work day. I am here to ask that working kids in show business have a studio teacher on school days. I am here to protect a portion of that child's income. I am here to ask that a child working in the performing arts not be considered truant from school. I am here to ask that a child and a family prepared to enter this Industry acquire a Work Permit that warrants that the child is maintaining at least a C-average in school. I am here to ask that a well-meaning parent not be allowed to squander their child's money.

All of these provisions are contained in HB-942. North Carolinians should be proud of this effort to protect youngsters, and prouder still of the willingness of industry leaders to get behind this proposal, for they, too want to protect our most precious resource, the children whom they employ and work with every day.

The absence of the laws and regulations contained in HB-942 is a need that speaks for itself. Thousands of children are currently working in an unregulated environment. As the entertainment industry grows here in North Carolina thousands more will be employed. HB-942 will help these kids save a portion of their income, and will plainly say that education is important.

Thank you for your time and attention.

PAUL PETERSEN

Attachment II

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H942-CSSB-002

H. B. No. 942 DATE 4-21-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Redwine

1 moves to amend the bill on page 1, line 18
2 ( ) WHICH CHANGES THE TITLE through page 2, line 4
3 by deleting those lines and
4
5 renumbering the subsequent
6
7 subdivisions accordingly.
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)

Attachment II

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H942-CSSB-002

H. B. No. 942 DATE 4-21-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Redwine
Sen.)

moves to amend the bill on page 9, line 4

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"(4) Require that a guardian of the estate be appointed as provided by"; and

on page 9, line 11

by inserting the words "under Article 35A" after the word "plan" on that line.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 820 A BILL TO BE ENTITLED AN ACT PROVIDING THAT STATE EMPLOYEES AND PUBLIC SCHOOL EMPLOYEES MAY SHARE LEAVE VOLUNTARILY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee **1:00 p.m.** **April 21, 1999**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thad Daisa	NCBE
Caroline Fleming	student
Jennifer Hobbs	Student
Paul Roberson	A Minor Consideration
Joanne Hill	citizen
[illegible]	NCGA
Henry Jones	Attorney Raleigh
Dave Stupin	CAOC
Jonathan Barbee	1545 Garden Circle Burlington, NC 27215
Damieon Jefferies	855 Boone Rd. Burlington, N.C. 27217
Steve Curtis	311 Neal St. Elon College, NC-27244
Richard Parker	Burlington Kiwanis Club Burlington, NC
Paul Abernethy	" " " "
Steve Rendleman	" " " "
Tim Kent	American Institute of Architects
Eric Rudolph	Cherokee Chamber of Commerce
Lockhart Taylor	N.C.-ESC
David Boggs	NCESC
Tom Whitaker	NCESC
Jason Bennett	
Brian Wiltsey	Western High Alamance Co.
Lindsey Jones	1869 Little John Dr. W. Burlington, NC 27217
Leeanne Burge	4941 Mt. Vernon Ch. Rd. Burlington, NC 27217
Vikki Whitmore	1843 Travis Lane Burlington, NC 27217
Kathryn Sawyer	Commerce
Sylvia Higgins	State Const. Offic

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 820 A BILL TO BE ENTITLED AN ACT PROVIDING THAT STATE EMPLOYEES AND PUBLIC SCHOOL EMPLOYEES MAY SHARE LEAVE VOLUNTARILY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

House Committee
on
Ways and Means

Minutes
April 22, 1999
6:15 p.m.

The House Ways & Means Committee met Thursday, April 22, 1999 at 6:15 p.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Michael Decker to explain **HB 471 (Stokesdale/Summerfield Zoning).** He presented a proposed committee substitute to the Committee and moved for its adoption. The motion passed. He explained that the committee substitute bill changes the title of the original bill to "an act amending the charters of the towns of Stokesdale, Pleasant Garden, and Oak Ridge to exempt agricultural land uses with those jurisdictions from zoning" which extends coverage of the act to Pleasant garden and Oak Ridge. It also removes reference to exemption of agricultural uses under the State Building Code.

Discussion followed. Rep. Nesbitt asked Rep. Decker if there was any kind of regulation under his proposal to protect neighbors from other types of use such as rock concerts. Rep. Decker agreed and amended the committee substitute by inserting the following language: "This exemption does not limit regulation under this section with respect to the use of farm property for non-farm purposes." The amendment was adopted.

Rep. Pope moved to incorporate the amendment and the committee substitute into a new committee substitute, to give the new committee substitute a favorable report, original bill and unfavorable report. The motion passed.

HB 942 (Protect Child Performers) sponsored by Rep. Wayne Goodwin was before the Committee having been carried over from an earlier meeting. Rep. Goodwin presented a proposed committee substitute to the Committee and Rep. Cox moved for its adoption. The motion passed.

Staff Jeff Hudson began to explain the changes in the new committee substitute bill. The following changes were made:

p. 1 Line 2, Youths was changed to "Infants and Minors"
Lines 18, 19 deleted

p. 3 Line 14 "Court-Approved Contracts for High-Earning Minors" Section rewritten to clarify whether it applied to residents or non-residents and whether it is discretionary or mandatory.

p. 6 Line 18 "shall" changed to "may" to make it discretionary
Line 32 Guardianship District deleted. AOC said there was no such thing.

Line 39 "Probate Rules" changed to "Rules of Civil Procedure."

p. 9 Lines 4-6 changed to "Court would require that a guardian of the estate be appointed."

Line 8 "plan" deleted.

Line 11 "parents or legal" deleted

p. 10 Line 9 "shall" changed to "may"

Line 36 language added "This act only applied to contracts made on or after the effective date of the bill."

Rep. Nesbitt asked if that the changes meant that all the contract requirements are now discretionary. Staff agreed and added that appointment of a guardian is also discretionary.

Rep. Goodwin said he had worked very closely with Film Council and AOC and he thought that the bill had been made better by all these changes.

Rep. Cox told the Committee that he still had concerns about this bill and while he wanted to protect children, he didn't want to do anything to hurt the film industry in the state of North Carolina.

Ms. Sawyer from the Department of Commerce was "lukewarm on the bill."

Rep. Pope asked if the bill went through a study commission before it was filed. Rep. Goodwin said there had been press conferences and input from representatives in the industry. Rep. Nesbitt added that the impetus came from some former child actors who were now adults trying to move this proposal throughout the nation.

Rep. Pope wondered if this may someday affect his daughter who was an amateur actress or his neighbor's child who was a champion athlete. He felt he needed more time to study the bill.

Rep. Redwine added that there were no problems or semblance of problems in North Carolina related to this bill. This issue is complicated and he said he didn't feel comfortable in doing anything that has a "chilling effect" on the film industry. He wanted the issue to be the subject of a study commission.

Rep. Goodwin said that while he would like for the bill to pass, he wouldn't mind if it were referred to a study.

Rep. Eddins also endorsed the study commission idea.

Rep. Cox moved to instruct staff to draw up a study committee bill. His motion passed.

Rep. Redwine was recognized to explain HB **278 (TANF Separation Noncharged)** He presented a committee substitute to the committee and moved for its adoption. The motion passed. He said this bill amends the employment security laws to provide that the one hundred-day noncharge period extends to certain recipients of temporary assistance for needy families separated for a bona fide inability to work.

He said this was an incentive for employers to hire TANF recipients and get them into the workforce.

David Clegg from the Employment Security Commission was available to answer questions of the Committee.

Rep. Cox moved to give the committee substitute a favorable report, the original bill an unfavorable report. The motion passed.

Rep. Bridgeman was recognized to explain **HB 899 (Real Estate Salesman/Broker License)** He said he introduced the bill at the request of the North Carolina Real Estate Commission.

He said the bill extends application requirements for real estate brokers' licenses to limited liability companies and other business entities. Requires prospective salesmen to complete a training course with 75 (now 30) hours of classroom instruction with 3 (now 5) years of applying for a license. Requires prospective brokers to complete a training course with 60 (now 90) additional hours beyond those required for salesmen with 3 (now 5) years of applying for a license. The bill also permits taking examinations by computer with approval of the Real Estate Commission. The bill prohibits requiring additional examination for broker applicants who hold salesman licenses and specifies moral adequacy criterion for applicants: competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. It would also delete the grandfather provision permitting persons with licenses at the original date of passage of the chapter to avoid examination by filing a sworn application.

Upon conclusion of his remarks Rep. Nesbitt asked about the deletion of the grandfather provision. Who would it affect? Rep. Bridgeman said it would affect those who applied in 1957 and who have requested a license since that time.

Rep. Pope wondered if the Community Colleges supported this because the system would have to expand real estate courses. He was told that the Community College System supported the legislation, that they already provided 64 hours instruction.

Rep. Fox wanted to know what the difference between a salesman and a broker. Rep. Bridgeman responded that a salesman had to be working under a broker, but a broker could work on his own.

Rep. McCombs moved for a favorable report and the motion passed.

Rep. Paul Luebke was recognized to explain **HB 1164 (Energy Savings Contracts).**

Rep. Luebke said that this bill would amend the law regarding guaranteed energy savings contracts for local governmental units to take savings associated with operations costs into account, to extend the current maximum duration of these contracts, and to repeal the sunset. He said he learned about energy savings contracts when he served on Energy Policy Council, having been appointed to that Council by former House Speaker Dan Blue.

Rep. Nesbitt pointed out that our Committee had two bill on this subject and he explained HB 1213 (Sunset/Energy Savings Contracts) sponsored by Rep. Gene Rogers. He said HB 1213 would also repeal the sunset regarding the authority of local governmental units to enter into guaranteed energy savings contracts for local public facilities and to extend the current maximum duration of these contracts.

Rep. Pope supported the bill, that private business does this all the time.

Rep. Luebke said he would like to extend this law to include state agencies and wanted to do a committee substitute.

It was determined that it would be better to take up Rep. Rogers' bill before passing Rep. Luebke's bill, so no action was taken on HB 1164.

The Committee adjourned at 7:05 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 22, 1999
15 minutes after Session
Room 1228/1327

Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 278 TANF Separation Noncharged **(Redwine)**
HB 438 Beaufort County Local Act - 1 **(Edwards)**
HB 454 Simplify Bid Process/Cap. Proj. **(Allred)**
Temporarily Displaced 4/21/99
HB 467 Use of School Buses/US Open **(Morgan)**
HB 471 Stokesdale/Summerfield Zoning *(***Decker***)*
HB 899 Real Estate Salesman/Broker Licensure **(Bridgeman)**
HB 942 Protect Child Performers **(Goodwin)**
Temporarily Displaced 4/21/99
HB 951 Tenants on Housing Authority **(Edwards)**
HB 1114 Enhancing Emergency Medical Services **(Wright)**
HB 1120 Authorize Public Hospital Debt **(Wright)**
HB 1164 Energy Savings Contracts **(Luebke)**
HB 1195 Special needs Commission Modified **(Rogers)**
HB 1213 Sunset/Energy Savings Contracts **(Rogers)**

ADJOURNMENT

4/22

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 471
Proposed Committee Substitute H471-CSSB-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Local Zoning. (Local)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTERS OF THE TOWNS OF STOKESDALE, SUMMERFIELD, PLEASANT GARDEN, AND OAK RIDGE TO EXEMPT AGRICULTURAL LAND USES WITHIN THOSE JURISDICTIONS FROM ZONING.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Stokesdale, being Chapter 488 of the 1989 Session Laws, as amended by Chapter 956 of the 1989 Session Laws, is amended by adding a new section to read:

"Sec. 5.2. **Zoning Exemption.** Notwithstanding any other provision of law, the Town may not regulate or restrict agricultural land uses under its zoning ordinance. For the purposes of this section, an 'agricultural land use' includes 'agricultural land' as defined in G.S. 105-277.2 and property used for 'bona fide farm purposes' as defined in G.S. 153A-340(b)(2)."

Section 2. The Charter of the Town of Summerfield, being Chapter 426 of the 1995 Session Laws, as amended by Chapter 2 of the 1995 Session Laws, Second Extra Session 1996, and Chapter 249 of the 1997 Session Laws, is amended by adding a new section to read:

"Sec. 5.3. **Zoning Exemption.** Notwithstanding any other provision of law, the Town may not regulate or restrict agricultural land uses under its zoning ordinance. For the purposes of this section, an 'agricultural land use' includes 'agricultural land' as defined in G.S. 105-277.2 and property used for 'bona fide farm purposes' as defined in G.S. 153A-340(b)(2)."

Section 3. The Charter of the Town of Pleasant Garden, being Chapter 344 of the 1997 Session Laws, as amended by Chapter 205 of the 1997 Session Laws, 1998 Regular Session, is amended by adding a new section to read:

"Sec. 5-4. **Zoning Exemption.** Notwithstanding any other provision of law, the Town may not regulate or restrict agricultural land uses under its zoning ordinance. For the purposes of this section, an 'agricultural land use' includes 'agricultural land' as defined in G.S. 105-277.2 and property used for 'bona fide farm purposes' as defined in G.S. 153A-340(b)(2)."

Section 4. The Charter of the Town of Oak Ridge, being Chapter 113 of the 1997 Session Laws, 1998 Regular Session, as amended by Chapter 217 of the 1997 Session Laws, 1998 Regular Session, is amended by adding a new section to read:

"Sec. 5.2. **Zoning Exemption.** Notwithstanding any other provision of law, the Town may not regulate or restrict agricultural land uses under its zoning ordinance. For the purposes of this section, an 'agricultural land use' includes 'agricultural land' as defined in G.S. 105-277.2 and property used for 'bona fide farm purposes' as defined in G.S. 153A-340(b)(2)."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. Proposed Comm. Sub.

H. B. No. 471 DATE 4-22-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Decker
)
Sen.)

moves to amend the bill on page 1, line 16;
( ) WHICH CHANGES THE TITLE
~~by~~ and on page 2, line 7;
and on page 2, line 18;
and on page 2, line 29;

by inserting at the end of each line the following:

"This exemption does not limit regulation under this Section with respect to the use of farm property for nonfarm purposes."

SIGNED Michael Decker

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 942
PROPOSED COMMITTEE SUBSTITUTE H942-CSSB-002
09:48:23 EZT / 21-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Protect Child Performers. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

Change Title

AN ACT TO PROTECT (YOUTHS) Infants & Minors IN THE ENTERTAINMENT INDUSTRY AND OTHER HIGH-EARNING MINORS AND TO STUDY ADDITIONAL PROTECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.2 is amended by adding a new subdivision to read:

"(5a) 'Entertainment industry' means motion pictures or theatrical productions, or radio or television productions."

Section 2. G.S. 95-25.5(g) is repealed.

Section 3. G.S. 95-25.5 is amended by adding a new subsection to read:

"(g1) Youths employed as actors, models, or performers in the entertainment industry are exempt from all provisions of this section except that the following standards for physically dangerous activity and infants shall apply with regard to any employment of a youth in the entertainment industry:

(1) The youth's parent or guardian shall provide the employer a certificate signed by a doctor licensed to practice medicine with the state in which the

deleted

youth resides or is employed stating that the youth has been examined within six months before the date the youth was engaged by the employer and has been found to be physically fit.

(2) Before the youth's first call, the employer shall obtain the written consent of the youth's parent or legal guardian for medical care in the case of an emergency. If the parent or legal guardian, however, refuses to provide that consent because of religious convictions, the employer shall at least obtain written consent for external emergency aid, provided that the obtaining of that consent is not contrary to those religious convictions.

(3) No youth shall be required to work in a situation that places that youth in clear and present danger to life and limb. If the youth believes the youth would be in such danger, the youth shall have the opportunity to discuss the situation with the youth's parent or legal guardian. If the youth persists in the belief, regardless of its validity, the youth shall not be required to perform in the situation.

(4) When a youth is asked to perform physical, athletic, or acrobatic activity of an extraordinary nature, the youth's parent or guardian shall first be advised of the activity and shall represent that the youth is fully capable of performing the activity. The employer shall comply with reasonable requests for equipment that may be needed for safety reasons.

(5) Infants younger than one year old shall be full-term births, shall be full-weight infants, and shall not be employed sooner than 15 days after birth. An infant's parent or guardian shall provide the employer a certificate signed by a doctor licensed to practice medicine with the state in which the infant was born or is employed stating that the infant has been found to be a full-term birth and a full-weight infant."

Section 4. G.S. 95-25.5(k) reads as rewritten:

"(k) Persons and establishments required to comply with or subject to regulation of child labor under the Fair Labor Standards Act are exempt from all provisions of this section, except the certificate requirements of subsection (a), the

provisions of subsection (a1), the prohibition from occupations found and declared to be detrimental by the Commissioner of Labor pursuant to subsection (b), ~~and~~ the prohibitions of subsection ~~(j).~~ (j), and the provisions of subsection (g1). In addition, employment certificates will not be issued if such person's employment will be in violation of the applicable child labor provisions of the Fair Labor Standards Act. Such employers may also be assessed civil penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any regulation issued hereunder from which there is no exemption."

Section 5. Subchapter II of Chapter 35A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Court-Approved Contracts for High-Earning Minors.

"§ 35A-1229.1. Judicial approval.

(a) What Contracts the Court May Approve. -- A contract made by a minor or made by a parent or guardian of a minor, or a contract proposed to be so made, may be approved by a judge of the district court, where the minor is a resident of this State or the services of the minor are to be performed or rendered in this State, where the contract sought to be approved or made subject to approval is one under which:

(1) The minor is to perform or render artistic or creative services, including, but not limited to, services as an actor, actress, dancer, musician, vocalist, model, stunt person, conductor, or other performing artist.

(2) The minor is to render services as a participant in professional athletics or semiprofessional athletics, including, but not limited to, track and field, surfing, sailing, diving, boxing, gymnastics, ice skating, wrestling, bicycling, soccer, horse racing, motocross, softball, baseball, football, hockey, basketball, tennis, golf, and jai alai.

(3) The minor will endorse a product or service, or in any way receive compensation for the use of right of publicity of the minor.

(4) The minor agrees to purchase, sell, lease, license, transfer, or otherwise exploit literary, musical, or dramatic properties, whether tangible or intangible, or any rights therein for use in motion pictures, television, the production of recordings,

the legitimate or living stage, or otherwise in the entertainment field.

(5) A person is employed to receive compensation from the minor for services to the minor in connection with such performing or athletic services of the minor as a coach, manager, agent, trainer, or to otherwise represent or advise the minor in connection contracts to do so.

(6) The minor would receive gross earnings in excess of seven thousand five hundred dollars ($7,500).

(b) Approval for Existing Contract. -- Approval under this section may be sought for a contract or agreement that is already in existence and under which the parties are currently performing.

(c) Legal Status of Approved Contract by Minor. -- If a contract described in subsection (a) is approved by the district court pursuant to the requirements of this Article, the minor may not, either during that minor's minority or upon reaching majority, disaffirm the contract on the ground of minority or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended, or assigned after its approval under this section shall be deemed a new contract. If a contract described by subsection (a) is so approved, all earnings, royalties, or other compensation earned or received by the minor pursuant to the approved contract shall become the property of the minor, subject to the provisions of G.S. 35A-1229.2 and G.S. 35A-1229.3.

(d) Limitations.

(1) Approval of the contract pursuant to this section shall not exempt any person from any other law with respect to licenses, consents, or authorizations required for any conduct, employment, use, or exhibition of the minor in this State, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of such requirements, nor dispense with any other requirement of law relating to the minor.

(2) Approval of a contract pursuant to this section does not remove the disability of nonage for any other contract with the same minor if that contract is not approved by the court pursuant to this section, nor is the disability of nonage removed generally for the minor, nor is the minor

emancipated for any purpose or contract other than the performance of contracts approved pursuant to this section.

(3) No contract shall be approved that provides for an employment, use, or exhibition of the minor, within or without the State, which is prohibited by law and in particular by any federal or State child labor law, and could not be licensed to take place in this State.

(4) No contract shall be approved by the court unless:

a. A written acquiescence to the contract by the parent or parents having custody, or other person having custody of the minor, is filed in the proceeding;

b. Written approval is given by the guardian ad litem appointed by the court in this proceeding; or

c. The court finds that the minor is emancipated.

(5) No contract shall be approved if the term during which the minor is to perform or render services or during which a person is employed to render services to the minor, including any extensions thereof by option or otherwise, extends for a period of more than three years from the date or approval of the contract. If the contract contains any other covenant or condition which extends beyond three years, the contract may be approved if found to be reasonable and for such period as the court may determine.

(6) If the court that has approved a contract pursuant to this section shall find that the physical or mental well-being of the minor is being impaired by the performance of the contract or that the contract is in violation of any child labor law, the court may, at any time during the term of the contract during which services are to be performed by the minor or rendered by or to the minor or during the term of any other covenant or condition of the contract, either revoke its approval of the contract or declare such approval revoked unless a modification of the contract which the court finds to be appropriate in the circumstances is approved by order of the court. Application for an order pursuant to this subdivision may be made by the

minor, by that minor's parent or parents or guardian, by a guardian ad litem appointed for the purpose by the court on its own motion, or by the Commissioner of Labor. The order granting or denying the application shall be made after hearing, upon notice to the parties to the proceeding in which the contract was approved, given in the manner the court directs. Revocation of the approval of the contract shall not affect any right of action existing at the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the well-being of the minor was justified.

"§ 35A-1229.2. Procedure for court approval of contract; appointment of guardian ad litem.

(a) Who May Commence a Proceeding. -- A proceeding for approval of a contract described by G.S. 35A-1229.1 shall be commenced by verified petition by:

(1) Either natural parent of the minor, or other person having custody of the minor;

(2) A guardian of estate or property of the minor;

(3) The minor;

(4) Any party to the contract sought to be approved; or

(5) Any other interested person.

(b) Where a Proceeding May be Commenced. -- If a guardian of the estate or person has been appointed and qualified in this State, the petition shall be made to the district court in the district in which the guardian of the estate or person was appointed or in which that guardian qualified. If there is no such guardian, the petition shall be filed with the district court in the "district "having" guardianship" jurisdiction, in the district where the minor resides, or if the minor is not a resident of this State, in any county in which the minor is to be employed under the contract.

(c) Who Shall Be Notified. -- The following persons, other than one who is the petitioner or who joins in the petition, shall be served with the petition by formal notice as provided by North Carolina ~~Probate Rules:~~ Rules of Civil Procedure

(1) The minor, if over the age of 14 years;

(2) The minor's guardian, if any, whether or not appointed or qualified in this State;

(3) Each party to the contract;

(4) The parents of the minor;

(5) Any person having care or custody of the minor;
(6) The person with whom the minor resides, if other than a parent or guardian; and
(7) The Commissioner of Labor.

(d) Timing of Notice. -- Formal notice shall be made at least 30 days before the time at which the petition is set to be heard, unless the court shall fix a shorter time upon cause shown.

(e) Contents of Petition. -- The petition shall have annexed a complete copy of the contract or proposed contract and shall set forth:

(1) The full name, residence, and date of birth of the minor.
(2) The name and residence of any living parent of the minor, the name and residence of the person who has care and custody of the minor, and the name and residence of the person with whom the minor resides.
(3) Whether the minor is a resident of the State or, if the minor is not a resident, that the petition is for approval of a contract or to make a contract subject to court approval for performance or rendering of services by the minor and the place in the State where the services are to be performed or rendered.
(4) The brief statement as to the minor's employment and compensation under the contract or proposed contract.
(5) The statement that the term of the contract during which the minor is to perform or render services or during which a person is employed to render services to the minor can in no event extend for a period of more than three years from the date of the approval of the contract.
(6) An enumeration of any other covenants or conditions contained in the contract which extend beyond the three years or a statement that the contract contains no such other covenants or conditions.
(7) A schedule showing the minor's estimated gross earnings, estimated outlays, and estimated net earnings as defined in G.S. 35A-1229.3.
(8) The interest of the petitioner in the contract or proposed contract or in the minor's performance under it.

(9) Other facts known by the petitioner regarding the minor and the minor's family that show whether or not the contract is reasonable and provident and for the best interests of the minor, including whether the minor has had at any time a guardian appointed by the court of any jurisdiction, and the facts with respect to any previous application for the relief sought or whether similar relief has been sought with respect to the minor.

(f) Appointment of Guardian Ad Litem. -- At any time after the filing of the petition, the court, if it deems it advisable, may appoint a guardian ad litem, pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure, to represent the interests of the minor. The court shall appoint a guardian ad litem as to any contract where the parent or guardian will receive remuneration or financial gain from the performance of the contract or has any other conflict of interest with the minor. The court, in determining whether to appoint a guardian ad litem, may consider the following criteria:

(1) The length of time the exclusive services of the minor are required.

(2) Whether the gross earnings of the minor under the contract are either contingent or unknown.

(3) Whether the gross earnings of the minor under the contract are in excess of seven thousand five hundred dollars ($7,500).

(g) Compensation for Guardian Ad Litem. -- The guardian ad litem shall be entitled to reasonable compensation. The court shall have the power to determine the amount of the reasonable compensation paid to the guardian ad litem and may determine which party shall be responsible for the fee, whether the fee shall be paid from the earnings of the minor pursuant to the contract sought to be approved, or may apportion the fee between the parties to the proceedings.

(h) Attendance by Minor. -- The minor, unless excused by the court for good cause shown, shall attend personally before the court upon the hearing of the petition.

(i) Disposition of the Hearing. -- The court may, by order:

(1) Determine any issue arising from the proceedings or proof and required to be determined for final disposition of the matter, including issues with respect to the age or emancipation of the minor.

(2) Approve or disapprove the contract or proposed contract.

(3) Approve the contract upon such conditions, with respect to modification of the terms thereof or otherwise, as it shall determine.

(4) Appoint a guardian of the estate as provided by Article 6 of this Chapter to hold the earnings of the minor.

"§ 35A-1229.3. Guardianship of the estate.

(a) Guardianship Plan as Condition for Approval of Contract. -- The court may withhold its approval of the contract sought to be approved under G.S. 35A-1229.1 and G.S. 35A-1229.2 until the filing of a guardianship plan by the parents or legal guardian of the minor, which shall provide that a part of the minor's net earnings for services performed or rendered during the term of the contract be set aside and saved for the minor under a guardianship of the estate as provided in this section, until the minor attains majority or until further order of the court.

(b) Amount to Be Set Aside. -- The court shall fix the amount or proportion to be set aside as it deems for the best interests of the minor, and the amount or proportion so fixed may, upon subsequent application, be modified in the discretion of the court, within the limits of the consent given at the time the contract was approved. In fixing the amount or proportion, the court shall give consideration to financial circumstances of the parent of the minor and to the needs of their other children or, if the minor has any dependents, to the needs of the minor's family. If the minor has no dependents, then the court shall not require the setting aside of an amount or proportion in excess of two-thirds of the net earnings of the minor.

(c) Definition of 'Net Earnings.' -- For the purposes of this Article, 'net earnings' means the gross earnings received for services performed or rendered by the minor during the term of the contract, less:

(1) All sums required by law to be paid as taxes to any government or subdivision thereof with respect to or by reason of such earnings.

(2) Reasonable sums to be expended for the support, care, education, coaching, training, and professional management of the minor.

(3) Reasonable fees and expenses paid or to be paid in connection with the proceeding for approval, the contract, and its performance.

(d) Protection for Creditors of Others. -- Notwithstanding anything set forth in this Article, the creditors of any person,

other than creditors of the minor, shall not be entitled to the earnings of the minor.

(e) Appointment of Guardian of the Estate. -- If a guardian of the estate of the minor has been appointed or qualified in this State, that guardian shall receive and hold any net earnings directed by the court to be set aside for the minor as provided by subsection (a) of this section and by Article 6 regarding guardians of the estate. In any other case, a guardian of the estate shall be appointed as provided by Article 6 of this Chapter for the purpose of holding the net earnings of the minor pursuant to the contract as directed by the court pursuant to subsection (a) of this section and thereafter shall hold said earnings as a guardian of the estate.

may

(f) Disclosure of Interest. -- A parent, guardian, or other petitioner is not ineligible to be appointed as guardian of the estate or earnings of a minor derived from a contract approved pursuant to this Article by reason of that person's interest in any part of the minor's earnings under the contract or proposed contract or by reason of the fact that that person is a party to or is otherwise interested in the contract or in the minor's performance under the contract, provided that interest is fully disclosed to the court."

Section 6. The Legislative Research Commission shall study the need of youths employed in the entertainment industry for protection. It shall study how to adapt the unusual circumstances of youth employment in the entertainment industry to the needs youths have for normal educational, parenting, and social experiences. It shall study the proper role of State and local agencies, the schools, parents, employers, the courts, and the youths themselves in achieving the proper adaptation. The Legislative Research Commission shall reports its findings and recommendations to the 2000 session of the 1999 General Assembly or to the 2001 General Assembly, or to both.

Section 7. Section 6 of this act becomes effective July 1, 1999. The remainder of this act becomes effective January 1, 2000.

This only applies to contracts made after bill is ratified

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H278-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 278
THIS IS A DRAFT 7-APR-99 09:11:42
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: TANF Separation Noncharged/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT THE ONE HUNDRED-DAY NONCHARGE PERIOD EXTENDS TO CERTAIN RECIPIENTS OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES SEPARATED FOR A BONA FIDE INABILITY TO WORK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only

where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); ~~or~~ (vi) separation due to leaving for disability or health ~~condition~~ condition; or (vii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Temporary Assistance for Needy Families (TANF) assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 2. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date.

HOUSE BILL 278:
TANF Separation Noncharged/AB

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Redwine
		Summary by:	Tim Hovis Committee Counsel
Date:	April 6, 1999		
Version:	First Edition		

SUMMARY: ***House Bill 278 provides that an employer's account will not be charged for unemployment benefits paid to a claimant when the employee was discharged for a bona fide inability to do the work for which the employee was hired if (1) the employee was a recipient of Temporary Assistance for Needy Families (TANF) assistance by an agency of the State and (2) the employee's period of employment was 100 days or less.***

BILL ANALYSIS: Current law provides that an employer's account will not be charged for unemployment benefit payments paid to a claimant when the employee was discharged for a bona fide inability to do the work and the employee was hired pursuant to a job order placed with a local office of the Commission for referral to probationary employment. For this exemption to apply, the probationary must be 100 days or less.

House Bill 278 would extend this 100 day non-charge to TANF recipients who are separated from employment for a bona fide inability to do the work whether or not the employee was referred by the Commission. For this exemption to apply, the employee must have received TANF assistance in the last calendar quarter preceding the quarter in which the employee was paid wages by the employer.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 899

Short Title: Real Estate Salesman/Broker Licensure. (Public)

Sponsors: Representatives Bridgeman, Howard; Dedmon and Morris.

Referred to: Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN REQUIREMENTS FOR LICENSURE OF REAL ESTATE BROKERS AND SALESMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; ~~bond;~~ privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, ~~association, or corporation~~ corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission ~~on such forms as are~~ in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within ~~five~~ three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least ~~30~~ 75 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within ~~five~~ three years preceding the date the application is made, ~~either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or~~ have satisfactorily completed, at a school approved by the Commission, ~~advanced courses in Real Estate Law, Real Estate Finance, and Real Estate Brokerage Operations, each~~ an education program consisting of at least

~~30~~ 60 hours of classroom ~~instruction, these courses to~~ instruction in subjects determined by the Commission, which shall be in addition to ~~those~~ the course required for a real estate salesman license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the ~~above requirements.~~ education program. Each ~~application~~ applicant for a license as a real estate broker or real estate salesman shall be ~~accompanied by~~ required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00). ~~Each application for license as a real estate salesman shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).~~

(b) ~~Any~~ Except as otherwise provided in this Chapter, any person who ~~files such~~ submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written ~~examination to~~ examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine ~~his~~ the applicant's qualifications with due regard to the paramount interests of the public as to the ~~honesty, truthfulness, integrity and competency of the applicant.~~ applicant's competency. A person holding a real estate salesman license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.

~~The Commission may make such investigation as it deems necessary into the ethical background of the applicant.~~ An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of ~~the~~ any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to ~~such a person~~ the applicant a license, authorizing ~~such person~~ the applicant to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

~~Provided, however, that any person who, at the time of the passage or at the effective date of this Chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Commission setting forth his qualifications, including a statement that such applicant has not within five years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Commission under the provisions of this Chapter on proper application therefor and payment of a fee of ten dollars ($10.00).~~

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all ~~such~~ reasonable rules and regulations connected with ~~the application for any license~~ license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate ~~schools and such rules and regulations may, in accordance with G.S. 93A-4(a),~~ schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to ~~the teaching of mechanics and law governing real estate transactions at such schools.~~ instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee ~~whether by examination or under the grandfather clause or by comity~~ to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

Section 2. This act becomes effective October 1, 2000.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **April 22, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Sawyer	Commerce
Paul Wilms	NCHBA
John Phelps	NCLM
Henry Jones	Attorney Raleigh
David Clegg	NCESC
Mike Carpenter	NCHBA
Stephanie Mann	NC Assoc. of Realtors
Phillip Fralin	UC Real Estate Commission
Larry Outlaw	" "

House Committee
on
Ways and Means

Minutes
April 23, 1999

The House Ways & Means Committee met Friday, April 23, 1999 at 8:30 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized **Rep.** Russell Capps to explain **HB 529 (Display of American Flag).**

Rep. Capps told the Committee that the bill adds a new section to NC Gen. Stat. 144 that prohibits any limitation on displaying the American flag anywhere in the state if the flag is flown or displayed in accordance with Code of Etiquette for Display of U.S. flag set out in the US Code and if the flag is being displayed with the consent of the owner of the public or property on which it is being flown.

Discussion followed. Rep. Michaux asked where there is an ordinance that says a flag cannot be displayed. Rep. Starnes said the size of the flag is sometimes a problem.

Rep. Decker moved to amend the bill and the motion passed.

Rep. Owens moved to incorporate the amendment and the original bill into a committee substitute, to give the committee substitute a favorable report, unfavorable to original bill. The motion passed.

HB 985 (State Leases in a Unique Location) was before the committee and Rep. William Wainwright, the bill's sponsor, was recognized to explain the bill. (A copy of the bill summary is attached as **Attachment I).**

Rep. Wainwright said the bill was introduced at the request of the State Property Office and that it would eliminate futile advertising as it would enable the Council of State to exempt those classes of leases from the advertising process for which it is useless to advertise. A communication tower would be an example.

When he concluded his explanation, discussion followed. Members were concerned that the bill had potential for abuse and it was temporarily displaced.

HB 984 (Advertisement of State Leases Ltd) was before the Committee and Rep. Wainwright was recognized to explain the bill. (Bill summary attached as **Attachment II**).

He said this is the second of three bills that the State Property Office has requested to correct some situations in their Office. It increases the rental threshold at which a State agency is required to advertise for proposals from prospective lessors from $12,000 to $25,000. Not having to advertise these smaller leases has greatly enhanced the efficiency of space procurement.

Discussion followed. The bill was temporarily displaced.

HB 983(Property Transfers to Nonprofits) was before the Committee. Rep. Wainwright was recognized to explain the bill. He said this is the third bill introduced at the request of the State Property Office. (Bill Summary attached as **Attachment III**).

Discussion followed. Members also felt that there was great potential for abuse in this bill as well and the bill was temporarily displaced.

Rep. Nesbitt suggested that these three bills be sent to a subcommittee. He appointed Rep. Pope, Rep. Fox, and Rep. Wilson to study these bills and bring a committee substitute bill back to the Committee. Rep. Fox was appointed as Chairman.

HB 951 (Tenants on Housing Authority) was before the Committee. Rep. Zeno Edwards, bill sponsor, was recognized to explain the bill.

He said the bill requires that at least one person who is directly assisted by a public housing authority be appointed to each housing authority commission and regional housing authority in the state.

Rep. Michaux wondered why the Governor was included in the bill when this bill would apply to regional authorities and learned that language was apart of existing law.

Rep. Starnes moved to give the bill a favorable report and his motion passed.

A committee substitute for HB 438 (Beaufort County Local Act-1) was before the Committee. Rep. Edwards was recognized to explain the bill.

Rep. Edwards requested that his Housing Authority Director, Bill Cochrane, to explain the bill. He said he had been with the Authority for about 30 years. The Authority was recently sued by a tenant because it did not have a realtor on the Authority's staff. The bill would exempt housing authority from real estate licensure requirements.

Rep. Owens made a motion for a favorable report and the motion passed.

HB 1076 (Fire Mains Comply with Building Code) was before the committee. Rep. Cox was recognized to explain the bill.

He said would provide that public utilities contractors constructing fire service main for connection to fire sprinkler systems must terminate those lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains must comply with Standard 24 of the National Fire Protection Association that is incorporated and made applicable by Volume V of the NC Building Code.

Rep. Haire moved to give the bill a favorable report and his motion passed.

The meeting adjourned at 9:45 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 23, 1999
Room 1228/1327

8:30 a.m.
Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 438 Beaufort County Local Act - 1 **(Edwards)**
HB 454 Simplify Bid Process/Cap. Proj. **(Allred)**
HB 529 Display of American Flag **(Capps)**
HB 843 Orange/Chapel Hill Local Act **(Insko)**
HB 951 Tenants on Housing Authority **(Edwards)**
HB 983 Property Transfers to Nonprofits **(Wainwright)**
HB 984 Advertisement of State Leases Ltd. **(Wainwright)**
HB 985 State Leases in a Unique Location **(Wainwright)**
HB 1000 Addiction Research Authority **(Alexander)**
HB 1071 Handicapped Law Changes **(Alexander)**
HB 1076 Fire Mains Comply with Building Code **(Cox)**
HB 1164 Energy Savings Contracts **(Luebke)**
HB 1195 Special Needs Commission Modified **(Rogers)**
HB 1213 Sunset/Energy Savings Contracts **(Rogers)**

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 529

Short Title: Display of American Flag. (Public)

Sponsors: Representatives Capps; Allred, Arnold, Baker, Brown, Brubaker, Buchanan, Cansler, Carpenter, Creech, Culp, Daughtry, Davis, Decker, Dedmon, Dockham, Eddins, Edwards, Ellis, Fox, Gardner, Gulley, Hiatt, Holmes, Howard, Hurley, Justus, Kiser, McCombs, Mitchell, Moore, Morris, Nye, Rayfield, Russell, Setzer, Sexton, Smith, Walend, Warner, G. Wilson, and Wood.

Referred to: Ways and Means, if favorable, Rules, Calendar and Operations of the House.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE DISPLAY OF THE UNITED STATES FLAG.

The General Assembly of North Carolina enacts:

Section 1. Chapter 144 of the General Statutes is amended by adding a new section to read:

"**§ 144-6. Display of the American flag.**

No provision shall prohibit the American flag from being flown or displayed anywhere within the State if the flag is flown or displayed:

(1) In accordance with the Code of Etiquette for Display and Use of the United States Flag, as set forth in 36 U.S.C. §§ 171-178.

(2) Upon private or public property with the consent of either the owner of the property or any person having lawful control of the property."

Section 2. The title of Chapter 144 of the General Statutes reads as rewritten:

"State Flag, American Flag, Motto and Colors.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 529

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H529-ASC-001

Date 4-23-99 ,1999

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

Representative _____

moves to amend the bill on page 1, line 7,
by rewriting the line to read:
" No provision of law shall prohibit the flag of the United States of America from being flown or displayed"; and,

on page 1, lines 9 through 10
by rewriting the lines to read:
"(1) In accordance with the Patriotic Customs set forth in 36 U.S.C. §§ 171-178 governing the display and use of the flag of the United States of America.".

SIGNED Michael Decker
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 985

Short Title: State Leases in a Unique Location. (Public)

Sponsors: Representatives Wainwright and Jeffus.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE OR PREDETERMINED LOCATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-32 reads as rewritten:

"**§ 146-32. Exemptions as to leases, etc.**

The Governor, acting with the approval of the Council of State, may adopt rules and regulations.

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

~~(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:~~

~~a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property; or~~

~~b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental~~

~~exempted under this subparagraph may not be for a period of more than six months.~~"

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

Attachment I 4/28/99

HOUSE BILL 985:
State Leases in a Unique Location

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representatives Wainwright and Jeffus
Date:	April 22, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: G.S. 146-25.1 requires state agencies seeking to lease land with an estimated rental exceeding $12,000 to submit specifications to the Department of Administration and advertise for proposals from prospective lessors. House Bill 985 would authorize the Governor, with the approval of the Council of State, to adopt rules exempting State agencies from the provisions of G.S. 146-25.1

CURRENT LAW: Current law authorizes the Governor, with approval of the Council of State, to adopt rules exempting state agencies seeking to lease land from the requirements of Chapter 146 governing land acquisitions. However, with certain exceptions, the rules may **not** exempt State agencies from the requirements of G.S. 146-25.1. This statute requires state agencies to advertise from prospective lessors when seeking to lease property.

House Bill 985 would authorize rules adopted by the Governor and the Council of State to exempt state agencies from the provisions of G.S. 146-25.1. A copy of the statute is attached.

§ 146-25.1. Proposals to be secured for leases.

(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed twelve thousand dollars ($12,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. In the event either no proposal or no acceptable proposal is received after advertising in accordance with subsection (a) of this section, the Department may negotiate in the open market for leasing of the needed land.

(c) The Department of Administration shall present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals.

(1973, c. 1448; 1975, c. 523; 1977, c. 485; 1979, c. 43, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97.)

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. - Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 984

Short Title: Advertisement of State Leases Limited. (Public)

Sponsors: Representatives Wainwright and Jeffus.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-25.1(a) reads as rewritten:

"(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed ~~twelve thousand dollars ($12,000)~~ twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies."

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

Attachment II 4/23/99

HOUSE BILL 984:
Advertisement of State Leases Limited

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representatives Wainwright and Jeffus
Date:	April 22, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 984 increases the rental threshold at which a State agency is required to advertise for proposals from prospective lessors from $12,000 to $25,000.

CURRENT LAW: When desiring to rent land, current law requires a State agency to submit specifications to the Department of Administration and advertise for proposals from prospective lessors, but only if the rental is estimated to exceed $12,000 annually. The $12,000 threshold was enacted in 1984.

§ 146-25.1. Proposals to be secured for leases.

(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed twelve thousand dollars ($12,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors. In the event either no proposal or no acceptable proposal is received after advertising in accordance with subsection (a) of this section, the Department may negotiate in the open market for leasing of the needed land.

(c) The Department of Administration shall present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals.

(1973, c. 1448; 1975, c. 523; 1977, c. 485; 1979, c. 43, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97.)

CASE NOTES

Limits on Authority of Council of State upon Submission to It of Lowest Lease Proposal. - Once the Department of Administration has submitted to the Council of State the lowest lease proposal in accordance with requirements set forth in lease specifications, the Council of State does not have the authority to examine all lease proposals and to require the Department of administration to negotiate and enter a lease other than the lease proposal submitted by the Department of Administration. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 983

Short Title: Property Transfers to Nonprofits. (Public)

Sponsors: Representatives Wainwright and Jeffus.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE WITHOUT TAKING INTO ACCOUNT WHETHER THE ORGANIZATIONS ENGAGE IN SOME FOR-PROFIT ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-29.1(c) reads as rewritten:

"(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. ~~In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.~~"

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

Attachment III
4-22-99

HOUSE BILL 983:
Property Transfers to Nonprofits

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representatives Wainwright and Jeffus
Date:	April 22, 1999	**Summary by:**	Tim Hovis Committee Counsel
Version:	First Edition		

SUMMARY: G.S. 146-29.1 authorizes property owned by the State to be leased or sold at less than fair market value to private nonprofit corporations or associations. However, if the nonprofit corporation engages in some for profit activities, the amount of the sale or lease may not be less than the fair market value of the property times the percentage of the total activities of the nonprofit corporation. House Bill 983 would delete this restriction on the sale or lease of land to nonprofits by the State.

§ 146-29.1. Lease or sale of real property for less than fair market value.

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies. Any such sale, lease, or rental shall be reported at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section.

(1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(a); 1993, c. 561, s. 32(c).)

Editor's Note. - Session Laws 1985, c. 479, s. 172(b) made this section effective August 1, 1985, but provided that the section would not apply to contracts entered into prior to the effective date thereof.

Session Laws 1985, c. 757, s. 173 provided that this section, as enacted by Session Laws 1985, c. 479, s. 172, would not apply to the lease of property for the Ronald McDonald House that was approved by the Board of Governors of the University of North Carolina on June 28, 1985.

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 26 provides: "The Department of Administration may enter into leases with the North Carolina Aquarium Society, a nonprofit corporation whose sole purpose is to assist financially the three State supported aquariums. Any leases entered into pursuant to this section are exempt from the provisions of G.S. 146-29.1."

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 951

Short Title: Tenants on Housing Authority. (Public)

Sponsors: Representatives Edwards; and Luebke.

Referred to: Ways and Means.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT AT LEAST ONE PERSON WHO IS DIRECTLY ASSISTED BY A PUBLIC HOUSING AUTHORITY BE APPOINTED TO EACH HOUSING AUTHORITY COMMISSION AND REGIONAL HOUSING AUTHORITY COMMISSION IN THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-5 reads as rewritten:

"**§ 157-5. Appointment, qualifications and tenure of commissioners.**

(a) An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and ~~he~~ the mayor shall designate the first ~~chairman.~~ chair. No commissioner may be a city official. ~~Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such~~ At least one of the commissioners appointed shall be a person who is directly assisted by the public housing authority. However, there shall be no requirement to appoint such a person if the authority: (i) operates less than 300 public housing units, (ii) provides reasonable notice to the resident advisory board of the opportunity for at least one person who is directly assisted by the authority to serve as a commissioner, and (iii) within a reasonable time after receipt of the notice by the resident advisory board, has not been notified of the intention of any such person to serve. The mayor shall appoint the person directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are directly assisted by the

authority. If the commissioner directly assisted by the public housing authority ceases to receive such assistance, the commissioner's office shall be abolished and another person who is directly assisted by the public housing authority shall be appointed by the mayor.

(b) No commissioner who is also a person directly assisted by the public housing authority shall be qualified to vote on matters affecting his or her official conduct or matters affecting his or her own individual tenancy, as distinguished from matters affecting tenants in ~~general; and further provided, that no~~ general. No more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. ~~Avery, Beaufort, Bertie, Burke, Caldwell, Camden, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing authority.~~

(c) The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

(d) The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his or her services but he or she shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his or her duties.

(e) When the office of the first ~~chairman~~ chair of the authority becomes vacant, the authority shall select a ~~chairman~~ chair from among its members. An authority shall select from among its members a ~~vice-chairman,~~ vice-chair, and it may employ a secretary (who shall be executive director), technical experts and such other officers, ~~agents~~ agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, ~~duties~~ duties, and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper."

Section 2. G.S. 157-36 reads as rewritten:

"**§ 157-36. Commissioners of regional housing authority.**

(a) The board of county commissioners of each county included in a regional housing authority shall appoint one person as a commissioner of such authority, and

each such commissioner to be first appointed by the board of county commissioners of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided in this Article, the board of county commissioners of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of county commissioners of each county shall appoint the successor of the commissioner appointed by it.

(b) The commissioners of the regional housing authority shall appoint as a commissioner at least one person who is directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are assisted by the authority. However, there shall be no requirement to appoint such a person if the authority: (i) operates less than 300 public housing units, (ii) provides reasonable notice to all resident advisory boards within the authority's area of operation of the opportunity for at least one person who is directly assisted by the authority to serve as a commissioner, and (iii) within a reasonable time after receipt of the notice by the resident advisory boards, has not been notified of the intention of any such person to serve. The commissioners of the regional housing authority shall appoint successors of the commissioner appointed by them and shall fill any vacancies. A certificate of the appointment signed by the chair of the commissioners of the regional housing authority shall be conclusive evidence of the due and proper selection of the commissioner. If the commissioner directly assisted by the regional housing authority ceases to receive such assistance, the commissioner's office shall be abolished and another person who is directly assisted by the regional housing authority shall be appointed by the commissioners of the regional housing authority.

(c) No commissioner who is also a person directly assisted by the regional housing authority shall be qualified to vote on matters affecting his or her official conduct or matters affecting his or her own individual tenancy, as distinguished from matters affecting tenants in general.

(d) If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of county commissioners of such county shall be thereupon abolished. If the person appointed as a commissioner under subsection (b) of this section resides in a county that is excluded from the authority's area of operation, the office of that commissioner shall be abolished and another person residing within the authority's area of operation shall be appointed.

(e) A certificate of the appointment of any ~~such~~ commissioner signed by the ~~chairman~~ chair of the board of county commissioners (or the appointing officer) shall be conclusive evidence of the due and proper appointment of such commissioner.

(f) If the area of operation of a regional housing authority consists at any time of an even number of counties, except as provided in subsection (g) of this section, the Governor ~~of North Carolina~~ shall appoint one additional commissioner to such regional housing authority whose term of office shall be as herein provided for a

commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The Governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the Governor and filed with the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be conclusive evidence of the due and proper appointment of such additional commissioner.

(g) If the membership of the board of commissioners consists of an even number as a result of the appointment of a person who is directly assisted by the regional housing authority, the Governor shall appoint one additional commissioner to the authority whose term of office shall be as herein provided for a commissioner of an authority, except that such term shall end at any earlier time that the area of operation of the authority shall be changed to consist of an even number of counties. A certificate of the appointment shall be signed and filed as provided in subsection (f) of this section. The Governor shall appoint successors to the additional commissioner and shall fill any vacancies.

(h) The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his or her successor has been appointed and has qualified.

(i) For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the appointing authority. ~~board of county commissioners appointing him, or in the case of the commissioner appointed by the Governor, by the Governor: Provided, that such~~ The commissioner shall have been given a copy of the charges against him or her at least 10 days prior to the hearing thereon ~~and: Provided, that such commissioner~~ and shall have had an opportunity to be heard in person or by counsel.

(j) The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(k) The commissioners of a regional housing authority shall elect a ~~chairman~~ chair from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1076

Short Title: Fire Mains Comply with Building Code. (Public)

Sponsors: Representative Cox.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT FIRE SERVICE MAINS COMPLY WITH THE NORTH CAROLINA STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-10(b) reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into five classifications as the common use of the terms are known -- that is,

(1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all types;

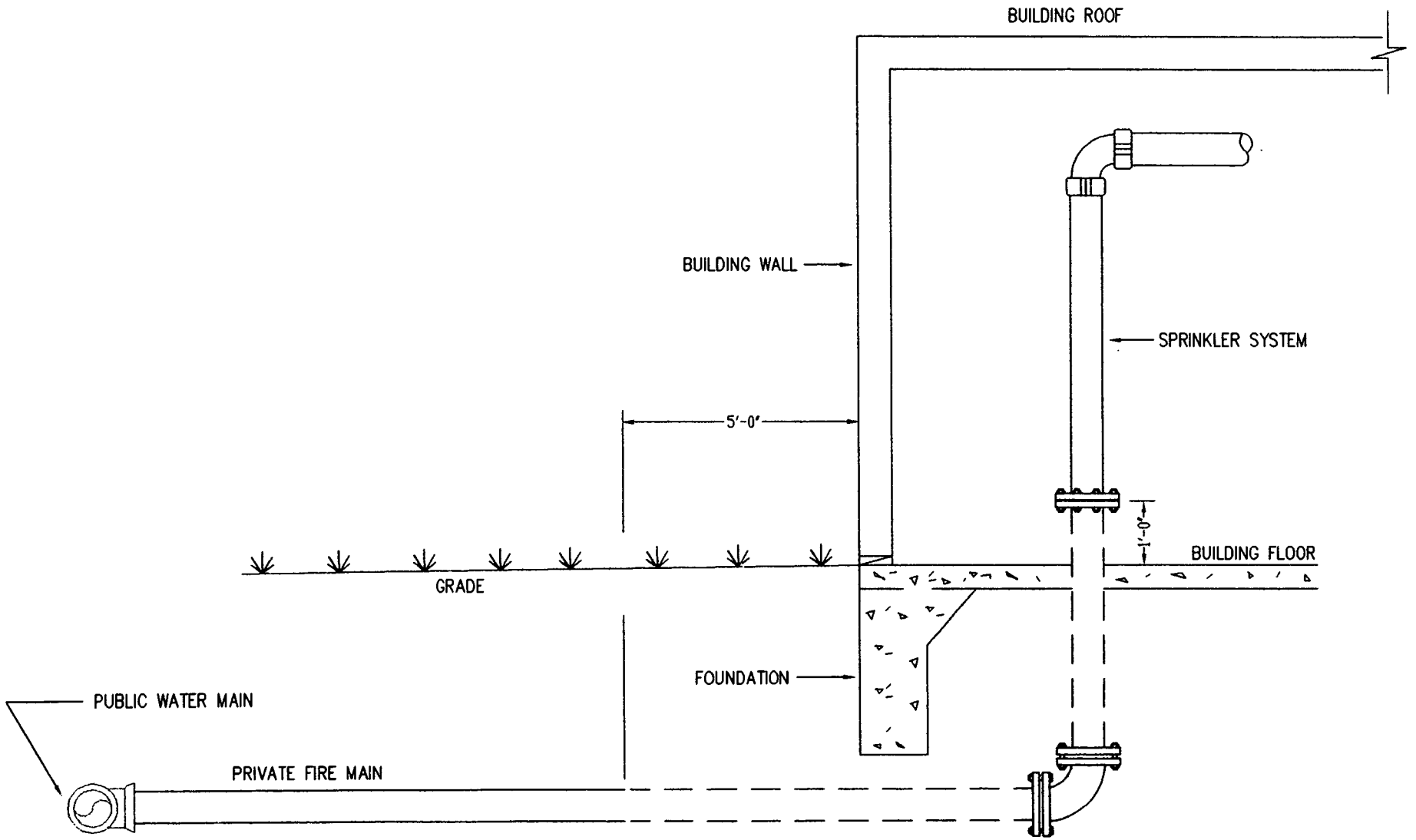
(1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138;

(2) Highway contractor;
(3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations;
b. Water and wastewater treatment facilities and appurtenances thereto;
c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the customer;
d. Public communication distribution facilities; and
e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor qualifies, and
(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected. Public utilities contractors constructing fire service mains for connection to fire sprinkler systems shall terminate those lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains shall comply with Standard 24 of the National Fire Protection Association ("NFPA Standard 24"), entitled "Standard for the Installation of Private Fire Service Mains" and incorporated in and made applicable by Volume V of the North Carolina State Building Code."

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

4/23/99



"SECTION VIEW"

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **April 23, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie English	NC Agribusiness Council
Steve Woodson	NC Farm Bureau
Mark Pleasant	Capitol Group
Carl Williams	NCBA
Tim KENT	American Institute of Architects
Stephanie Mansun	NC Assoc. of Realtors
Henry Jones	Attorney - Raleigh
Mark Ezzell	NC Gov. Institute Alcohol/Substance Abuse
Jacob Lohr, MD	" " " " "
Larry Sherrill	
Ellen H. Denny	Governor's Advocacy Council for Persons with Disabilities 2113 Caswell St., Raleigh
Max Brownlee	" " "
Julia Caputo	NCMSA
Leslie Berlowe	NCCBI

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 529 A BILL TO BE ENTITLED AN ACT PERTAINING TO THE DISPLAY OF THE UNITED STATES FLAG.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 951 A BILL TO BE ENTITLED AN ACT REQUIRING THAT AT LEAST ONE PERSON WHO IS DIRECTLY ASSISTED BY A PUBLIC HOUSING AUTHORITY BE APPOINTED TO EACH HOUSING AUTHORITY COMMISSION AND REGIONAL HOUSING AUTHORITY COMMISSION IN THE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☒ Committee Substitute for
H.B. 438 A BILL TO BE ENTITLED AN ACT EXEMPTING HOUSING AUTHORITIES FROM REAL ESTATE LICENSURE REQUIREMENTS..

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1076 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT FIRE SERVICE MAINS COMPLY WITH THE NORTH CAROLINA STATE BUILDING CODE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 898

Short Title: Child Bicycle Safety Act. (Public)

Sponsors: Representatives McAllister; Adams, Alexander, Barbee, Brown, Church, Fitch, Hurley, Kinney, Mosley, and Warner.

Referred to: Highway Safety, if favorable, Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHILE THEY ARE BICYCLE OPERATORS OR PASSENGERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part 10B to Article 3 to read:

"Part 10B. Child Bicycle Safety Act.

"**§ 20-171.6. Short title.**

This Article shall be known and may be cited as the 'Child Bicycle Safety Act'.

"**§ 20-171.7. Legislative findings and purpose.**

(a) The General Assembly finds and declares that:

(1) Disability and death of children resulting from injuries sustained in bicycling accidents are a serious threat to the public health, welfare, and safety of the people of this State, and the prevention of that disability and death is a goal of all North Carolinians.

(2) Head injuries are the leading cause of disability and death from bicycling accidents.

(3) The risk of head injury from bicycling accidents is significantly reduced for bicyclists who wear proper protective bicycle helmets; yet helmets are worn by fewer than five percent (5%) of child bicyclists nationwide.

(4) The risk of head injury or of any other injury to a small child who is a passenger on a bicycle operated by another person would be

significantly reduced if any child passenger sat in a separate restraining seat.

(b) The purpose of this Article is to reduce the incidence of disability and death resulting from injuries incurred in bicycling accidents by requiring that while riding on a bicycle on the public roads, public bicycle paths, and other public rights-of-way of this State, all bicycle operators and passengers under the age of 18 years wear approved protective bicycle helmets; that all bicycle passengers who weigh less than 40 pounds or are less than 40 inches in height be seated in separate restraining seats; and that no person who is unable to maintain an erect, seated position shall be a passenger in a bicycle restraining seat and all other bicycle passengers shall be seated on saddle seats.

"**§ 20-171.8. Definitions.**

As used in this Article, the following terms have the following meanings:

(1) 'Bicycle' means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle designed to transport by the action of pedaling which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) 'Operator' means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) 'Other public right-of-way' means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular and/or pedestrian traffic.

(4) 'Passenger' means a person who travels on a bicycle in any manner except as an operator.

(5) 'Protective bicycle helmet' means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(6) 'Public bicycle path' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(7) 'Public roadway' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by motor vehicles.

(8) 'Restraining seat' means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in

such seat and protect such passenger from the moving parts of the bicycle.

(9) 'Tricycle' means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

"§ 20-171.9. Requirements for helmet and restraining seat use.

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any person under the age of 18 to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect, seated position on the bicycle;

(2) Except as provided in subdivision (3) of this subsection, the person is properly seated alone on a saddle seat (as on a tandem bicycle); and

(3) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) It shall be unlawful for any parent or legal guardian of a person below the age of 18 to knowingly permit such person to operate or be a passenger on a bicycle in violation of subsection (a) or (b) of this section.

(d) It shall be unlawful to rent or lease any bicycle to or for the use of any person under the age of 18 unless:

(1) The person is in possession of a protective bicycle helmet of good fit at the time of such rental or lease; or

(2) The rental or lease includes a protective bicycle helmet of good fit, and the person intends to wear the helmet, as required by subsection (a) of this section, at all times while operating or being a passenger on the bicycle.

(e) No negligence or liability shall be assessed on or imputed to any party on account of a violation of subsections (a), (b), or (c) of this section.

"§ 20-171.10. Civil penalties.

(a) Except as provided in subsection (b) of this section, any person violating any requirement set forth in G.S. 20-171.9 shall be held responsible for an infraction and may pay a civil fine of up to thirty dollars ($30.00), inclusive of all penalty assessments and court costs.

(b) In the case of a first conviction within a 12-month period of G.S. 20-171.9(a), (b), or (c), the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as

appropriate, a protective bicycle helmet or a restraining seat, and uses and intends to use it whenever required under G.S. 20-171.9."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 898

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H898-ARG-001

Page 1 of __

Date 4-26-99 ,1999

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

moves to amend the bill on page 3, lines 27-34,
by deleting those lines;

and on page 3, line 35,
by deleting "(e)" and substituting "(d)".

SIGNED Mary L. Jarrell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

4/26/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 454
PROPOSED COMMITTEE SUBSTITUTE H454-CSSB-001
21:06:00 EZT / 21-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Simplify Bid Process/Capital Proj. (Public)

Sponsors:

Referred to:

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COMPETITIVE BID PROCESS FOR CITY, COUNTY, AND PUBLIC SCHOOL PROJECTS OF FIVE HUNDRED THOUSAND DOLLARS OR LESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-132 reads as rewritten:

"**§ 143-132. Minimum number of bids for public contracts.**

(a) ~~No~~ Except as provided in subsection (b1) of this section, no contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of

the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(b1) When the entire cost of construction or repairs is five hundred thousand dollars ($500,000) or less, a county, city as defined in G.S. 160A-1(2), or local school administrative unit may award a contract if at least two competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor. If after advertisement for bids as required by G.S. 143-129, fewer than two such competitive bids have been received, the governing body of the county, city, or local board of education shall again advertise for bids. If as a result of the second advertisement, only one such competitive bid is received from a responsible bidder, the governing body may let the contract to that bidder.

For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts pursuant to G.S. 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of this subsection. For purposes of this subsection, a single-prime bid and a full set of separate-prime bids made by the same contractor shall constitute only one competitive bid. If there are at least two single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines governing the opening of bids pursuant to this Article. These guidelines shall be distributed to all public bodies subject to

this Article. The guidelines shall not be subject to the provisions of Chapter 150B of the General Statutes."

Section 2. This act becomes effective July 1, 1999, and applies to projects advertised on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 843*

Short Title: Orange/Chapel Hill Local Act. (Local)

Sponsors: Representatives Insko and Hackney.

Referred to: Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REQUIRE BY ORDINANCE CERTAIN NOTICE OF PESTICIDE APPLICATION, TO AUTHORIZE ORANGE COUNTY TO REGULATE BY ORDINANCE THE EMISSION OF POLLUTANTS OR CONTAMINANTS, AND TO AUTHORIZE THE TOWN OF CHAPEL HILL TO REGULATE THE TIMING, NUMBER, AND SIZE OF PRIVATE DEVELOPMENT PROJECTS UNDER CONSTRUCTION WITHIN A SPECIFIED WATERSHED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-465(d) reads as rewritten:

"(d) ~~No~~ Subject to G.S. 153A-143, no county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of pesticides in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority."

Section 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-143. Notice of pesticide application.**

A county may by ordinance require that:

(1) Notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity of that property.

(2) Notice of an application of a pesticide be conspicuously posted at the time and place of the application."

Section 3. G.S. 153A-445(a) reads as rewritten:

"(a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. -- Joint Exercise of Powers.

(2) Chapter 160A, Article 20, Part 2. -- Regional Councils of Governments.

(3) G.S. 160A-487. -- Financial support for rescue squads.

(4) G.S. 160A-488. -- Art galleries and museums.

(5) G.S. 160A-492. -- Human relations programs.

(6) G.S. 160A-497. -- Senior citizens programs.

(7) G.S. 160A-489. -- Auditoriums, coliseums, and convention and civic centers.

(8) G.S. 160A-498. -- Railroad corridor preservation.

(9) G.S. 160A-185. -- Emission of pollutants or contaminates."

Section 4. G.S. 113A-60(a) reads as rewritten:

"(a) Any local government may submit to the Commission for its approval an erosion and sediment control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sediment control programs. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this ~~Article.~~ Article and may regulate the timing, number, and size in acres of private development projects that may be permitted and under construction within a specified watershed. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission."

Section 5. Sections 1 through 3 of this act apply to Orange County only.

Section 6. Section 4 of this act applies to the Town of Chapel Hill only.

Section 7. This act is effective when it becomes law.

April 1, 1999

H 843. ORANGE/CHAPEL HILL LOCAL ACT (=S 724). *TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REQUIRE BY ORDINANCE CERTAIN NOTICE OF PESTICIDE APPLICATION, TO AUTHORIZE ORANGE COUNTY TO REGULATE BY ORDINANCE THE EMISSION OF POLLUTANTS OR CONTAMINANTS, AND TO AUTHORIZE THE TOWN OF CHAPEL HILL TO REGULATE THE TIMING, NUMBER, AND SIZE OF PRIVATE DEVELOPMENT PROJECTS UNDER CONSTRUCTION WITHIN A SPECIFIED WATERSHED.* (1) Adds a new GS 153A-143, as it applies to Orange County only, permitting Orange County by ordinance to require that notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity. (2) Amends GS 153A-445(a), as it applies to Orange County only, to give Orange County the authority that cities have under GS 160A-185 to regulate the emission of pollutants or contaminants. (3) Amends GS 113A-60(a), as it applies to the town of Chapel Hill only, to allow Chapel Hill to regulate the timing, number, and size in acres of private development projects that may be permitted and under construction within a specified watershed.

Intro. by Insko and Hackney.

Ref. to Ways & Means ORANGE

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 843 DATE 4-26-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Haire
)
Sen.)

moves to amend the bill on page 2, line 5 27 - 29

( ) WHICH CHANGES THE TITLE

by Rewriting such lines to read as follows:

"Rules adopted pursuant to this ~~Article~~ Article, and may require enhanced and increased redistentation protection by reason of the concurrent construction of two or more projects in the same watershed. Two or more units of local government"

SIGNED Rep Haire

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. 1

H. B. No. 843 DATE 4/26/99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Haire
Sen.)

1 moves to amend the bill on page 2, line 5 16-18
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines and
4 renumbering the following sections
5 accordingly.
6
7
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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. First

H. B. No. 843 DATE 4-26-99

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Haire
)
Sen.)

moves to amend the bill on page 1, line 10

( ) WHICH CHANGES THE TITLE

~~by~~ through page 2, line 5,
by deleting those lines;

and by renumbering the remaining sections accordingly.;

and on page 1, lines 1-8
by rewriting the lines to read:
"A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CHAPEL HILL TO ENHANCE AND INCREASE SEDIMENTATION PROTECTION.";

and on p. 2, line 35,
by deleting that line.

SIGNED Nancy Haire

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

4/26/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H985-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 985
THIS IS A DRAFT 26-APR-99 09:43:10
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Land Transactions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-25.1(a) reads as rewritten:

"(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed ~~twelve thousand dollars ($12,000)~~ twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land

and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies."

Section 2. G.S. 146-29.1(c) reads as rewritten:

"(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society ~~upon a determination by~~ if the Department of Administration ~~that such~~ determines both of the following:

(1) The transaction is in consideration of public service rendered or to be ~~rendered.~~ rendered by the nonprofit.

(2) The property will be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business, as defined in section 513 of the Code. For the purposes of this subdivision, the term "Code" has the same meaning as in G.S. 105-228.90.

The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. ~~In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.~~"

Section 3. G.S. 146-32 reads as rewritten:

"**§ 146-32. Exemptions as to leases, etc.**

The Governor, acting with the approval of the Council of State, may adopt rules and regulations.

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:

a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property; ~~or~~

b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six ~~months.~~ months; or

c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 985
Committee Substitute Favorable 4/27/99

Short Title: State Land Transactions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-25.1(a) reads as rewritten:

"(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed ~~twelve thousand dollars ($12,000)~~ twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies."

Section 2. G.S. 146-29.1(c) reads as rewritten:

"(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society ~~upon a determination by~~ if the Department of Administration ~~that such~~ determines both of the following:

(1) The transaction is in consideration of public service rendered or to be ~~rendered.~~ rendered by the nonprofit.

(2) The property will be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business, as defined in section 513 of the Code. For the purposes of this subdivision, the term "Code" has the same meaning as in G.S. 105-228.90.

The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. ~~In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.~~"

Section 3. G.S. 146-32 reads as rewritten:

"**§ 146-32. Exemptions as to leases, etc.**

The Governor, acting with the approval of the Council of State, may adopt rules and regulations.

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:

a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property; ~~or~~

b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six ~~months.~~ months; or

c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location."

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

April 12, 1999

H 985. STATE LEASES IN A UNIQUE LOCATION. *TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE OR PREDETERMINED LOCATIONS.* Amends GS 146-32 (which authorizes the Governor, with approval of Council of State, to exempt classes of leases from requirements of Ch 146) to delete provision that limited Governor's authority to cases in which lease is less than 21 days, is necessitated by disaster, or is required because other property intended to be occupied is not ready on time.
Intro. by Wainwright and Jeffus.
Ref. to Ways & Means GS 146

April 27, 1999

H 985. STATE LAND TRANSACTIONS. Intro. 4/12/99. House committee substitute makes the following changes to 1st edition. Changes title to "TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS." Amends GS 146-25.1(a) to increase the amount of a lease for which Dep't of Admin. is required to advertise from $12,000 to $25,000 per year. Amends GS 146-29.1(c) to require that for property to be sold or leased at less than market value to a nonprofit the property must be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business. Amends GS 146-32(3) to add as a condition for exempting a lease from requirements of GS Ch. 146 that the lease requires a unique location or a location that adjoins or is in close proximity to an existing rental location.

May 19, 1999

H 985. STATE LAND TRANSACTIONS. Intro. 4/12/99. Senate amendment makes the following changes to 1st edition. Amends GS 146-29.1(c) to provide that the fact that any sale of property under this subsection shall not be subject to a reversionary interest in the State shall be expressly made known to the Joint Legislative Commission on Government Operations, and the Governor and Council of State, prior to the transaction being authorized.

May 26, 1999

H 985. STATE LAND TRANSACTIONS. Intro. 4/12/99. Senate amendment makes the following changes to 2nd edition. Amends GS 116-37 and -40.6 to provide that acquisitions and dispositions of any interest in real property for use by UNC Health Care System or East Carolina Medical Facility Health Care Plan are subject to regulations adopted by their respective boards and are not subject to general law governing state acquisitions and dispositions and makes conforming change to title.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1149

Short Title: Modular Construction Requirements. (Public)

Sponsors: Representative Jeffus.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A GENERAL CONTRACTOR LICENSE IS REQUIRED FOR THE ERECTION OF A MODULAR BUILDING AND TO PROVIDE A LIMITED EXEMPTION FROM THIS REQUIREMENT FOR CERTAIN MODULAR COMMERCIAL STRUCTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-1 reads as rewritten:

"**§ 87-1. 'General contractor' defined; exceptions.**

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($30,000) or more, or undertakes to erect a ~~North Carolina labeled manufactured~~ modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plan equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs or alters a building on land owned by that person, firm or corporation provided such building is intended solely for occupancy by that person and his family, firm, or

corporation after completion; and provided further that, if such building is not occupied solely by such person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend such building solely for occupancy by that person and his family, firm, or corporation.

This section shall not apply to any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when such building is intended for use by that person after completion.

This section shall not apply to any person that erects a modular building that meets the requirements of G.S. 143-139.1(c)."

Section 2. G.S. 143-139.1 reads as rewritten:

"**§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing ~~laboratory.~~ laboratory; licensure requirements for certain commercial buildings.**

(a) The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

~~The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings.~~

(b) A person that erects a modular building shall be licensed as a general contractor pursuant to Chapter 87 of the General Statutes.

(c) Notwithstanding subsection (b) of this section and G.S. 87-1, a person that erects a modular building that meets all of the following requirements shall be licensed as either a general contractor under Chapter 87 of the General Statutes or a set-up contractor under Article 9A of this Chapter:

(1) The building is to be erected only for a commercial use.

(2) The building is structurally similar to and transported to the site in the same manner as a manufactured home, as determined by rules adopted by the Building Code Council.

(3) A building consisting of a single unit is no larger than 2,000 square feet. With respect to a modular building consisting of multiple units, each of which meets the requirements of subdivision (2) of this subsection, no single unit is larger than 1,500 square feet, no more than five units are joined together to form the building, and no units are stacked.

(d) Proof of compliance with this section shall be provided to the code enforcement official prior to the issuance of a permit for the erection of the building. The Building Code Council shall adopt rules for the enforcement of this subsection. When the work is performed by a set-up contractor licensed under Article 9A of this Chapter, G.S. 143-143.12(c) shall also apply to the buyer of the modular building."

Section 3. This act becomes effective September 1, 1999.

April 15, 1999

H 1149. MODULAR CONSTRUCTION REQUIREMENTS. *TO PROVIDE THAT A GENERAL CONTRACTOR LICENSE IS REQUIRED FOR THE ERECTION OF A MODULAR BUILDING AND TO PROVIDE A LIMITED EXEMPTION FROM THIS REQUIREMENT FOR CERTAIN MODULAR COMMERCIAL STRUCTURES.* Amends GS 87-1 and 143-139.1 to require persons who erect modular buildings for compensation to be licensed as a general contractor. Allows person to be licensed as either general or set-up contractor, however, if building is for commercial use and other conditions in new GS 143-139.1 are met. Effective Sept. 1, 1999.

Intro. by Jeffus.

Ref. to Ways & Means GS 87, 143

April 27, 1999

H 1149. MODULAR CONSTRUCTION REQUIREMENTS. Intro. 4/15/99. House committee substitute makes the following changes to 1st edition. Adds exception for licensed set-up contractors who erect on-frame single family residential modular buildings (defined in the act) and amends title accordingly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1071*

Short Title: Handicapped Law Changes. (Public)

Sponsors: Representatives Alexander; Jeffus, McLawhorn, Setzer, Wainwright, and Warren.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE HANDICAPPED PERSONS PROTECTION ACT, CHAPTER 168A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 168A of the General Statutes reads as rewritten:

"Chapter 168A.

"~~Handicapped~~ Persons With Disabilities Protection Act.

"**§ 168A-1. Title.**

This Chapter may be cited as the North Carolina ~~Handicapped~~ Persons With Disabilities Protection Act.

"**§ 168A-2. Statement of purpose.**

(a) The purpose of this Chapter is to encourage and enable all ~~handicapped people~~ persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State.

(b) The General Assembly finds that: the practice of discrimination based upon a ~~handicapping~~ disabling condition is contrary to the public interest and to the principles of freedom and equality of opportunity; the practice of discrimination on the basis of a ~~handicapping~~ disabling condition threatens the rights and proper privileges of the inhabitants of this State; and such discrimination results in a failure to realize the productive capacity of individuals to their fullest extent.

"**§ 168A-3. Definitions.**

As used in this Chapter, unless the context otherwise ~~requires, the term:~~ requires:

(1) "Discriminatory practice" means any practice prohibited by this Chapter.

(2) "Employer" means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) "Employment agency" means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) ~~"Handicapped person"~~ "Person with a disability" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, ~~and learning.~~ learning, and working.

c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(5) ~~"Handicapping~~ "Disabling condition" means any condition or characteristic that renders a person a ~~handicapped person.~~ person with a disability.

(6) "Labor organization" means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) "Person" includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(8) "Place of public accommodations" includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) "Qualified ~~handicapped person"~~ person with a disability" means:

a. With regard to employment, a ~~handicapped~~ person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the ~~handicapped~~ person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the ~~handicapping~~ disabling condition does not create an unreasonable risk to the safety or health of the ~~handicapped person,~~ person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a ~~handicapped~~ person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a ~~handicapped~~ person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against ~~the handicapped.~~ persons with a disability.

(10) "Reasonable accommodations" means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known

~~handicapping~~ disabling conditions of the ~~handicapped~~ person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that "reasonable accommodation" does not require that an employer:

1. Hire one or more employees, other than the ~~handicapped person,~~ person with a disability, for the purpose, in whole or in part, of enabling the ~~handicapped~~ person with a disability to be employed; or
2. Reassign duties of the job in question to other employees without assigning to the ~~handicapped~~ employee with a disability duties that would compensate for those reassigned; or
3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or
4. Alter, modify, change or deviate from bona fide seniority policies or practices; or
5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or
6. Make physical changes to accommodate a ~~handicapped~~ person with a disability where:
   I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or
   II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's ~~handicapping~~ disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or
7. Make any changes that would impose on the employer an undue hardship, provided that the costs of less than five percent (5%) of an employee's salary or annualized wage as determined in subsection (6)

above shall be presumed not to be an undue hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the ~~handicapping~~ disabling conditions of a ~~handicapped person,~~ person with a disability, including, but not limited to, making facilities accessible to and usable by ~~handicapped persons,~~ persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

"§ 168A-4. Reasonable accommodation duties.

(a) A qualified ~~handicapped~~ person with a disability requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, or place of public accommodation of his or her ~~handicapping~~ disabling condition, submit any necessary medical documentation, make suggestions for such possible accommodations as are known to such ~~handicapped person,~~ person with a disability, and cooperate in any ensuing discussion and evaluation aimed at determining possible or feasible accommodations.

(b) Once a qualified ~~handicapped~~ person with a disability has requested an accommodation, or if a potential accommodation is obvious in the circumstances, an employer, employment agency, labor organization or place of public accommodation shall investigate whether there are reasonable accommodations that can be made and make reasonable accommodations as defined in G.S. 1 68A-3(10).

"§168A-5. Discrimination in employment; exemptions.

(a) Discriminatory practices. -- It is a discriminatory practice for:

(1) An employer to fail to hire or consider for employment or promotion, to discharge, or otherwise to discriminate against a qualified ~~handicapped~~ person with a disability on the basis of a ~~handicapping~~ disabling condition with respect to compensation or the terms, conditions, or privileges of employment;

(2) An employment agency to fail or refuse to refer for employment, or otherwise to discriminate against a qualified ~~handicapped~~ person with a disability on the basis of a ~~handicapping~~ disabling condition;

(3) A person controlling an apprenticeship, on-the-job, or other training or retraining program, to discriminate against a qualified ~~handicapped~~ person with a disability on the basis of a ~~handicapping~~ disabling condition in admission to, or employment in, a program established to provide apprenticeship or other training; ~~or~~

(4) An employer or employment agency to require an applicant to identify himself as ~~handicapped~~ a person with a disability prior to

a conditional offer of employment; however, any employer may invite an applicant to identify himself as ~~handicapped~~ a person with a disability in order to act affirmatively on his ~~behalf.~~ behalf; or

(5) An employer, labor organization, or employment agency to fail to meet the duties imposed on them by G.S. 168A-4(b).

(b) Exemptions. -- It is not a discriminatory action for an employer, employment agency, or labor organization:

(1) To make an employment decision on the basis of State and federal laws or regulations imposing physical, health, mental or psychological job requirements;

(2) To fail to hire, transfer or promote, or to discharge a ~~handicapped~~ person with a disability who has a history of drug abuse or who is unlawfully using drugs where the job in question is in an establishment that manufactures, distributes, dispenses, conducts research, stores, sells or otherwise handles controlled substances regulated by the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;

(3) To fail to hire, transfer, or promote, or to discharge a ~~handicapped~~ person with a disability because the person has a communicable disease which would disqualify a ~~non-handicapped~~ person without a disability from similar employment;

(4) To fail to make reasonable accommodations where the ~~handicapped~~ person with a disability has not fulfilled the duties imposed by G.S. 168A-4;

(5) To inquire whether a person has the ability to perform the duties of the job in question;

(6) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a ~~handicapping~~ disabling condition, provided (i) that an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and (ii) that the examination, unless limited to determining the extent to which a person's ~~handicapping~~ disabling condition would interfere with his or her ability or capacity to safely and satisfactorily perform the duties of the the job in question or the possible accommodations for a ~~handicapping~~ disabling condition, is required of all persons conditionally offered employment for the same position regardless of ~~handicapping~~ disabling condition;

(7) To obtain medical information or to require or request a medical examination where such information or examination is for the purpose of establishing an employee health record;

(8) To administer pre-employment tests, provided that the tests (i) measure only job-related abilities, (ii) are required of all applicants for the same position unless such tests are limited to determining the extent to which the person's ~~handicapping~~ disabling condition would interfere with his or her ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question, and (iii) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the ~~handicapped person's~~ impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question, provided that an employer shall not be liable for improper testing which was administered by a State agency acting as an employment agency.

"§ 168A-6. Discrimination in public accommodations.

It is a discriminatory practice for a person to deny a qualified ~~handicapped~~ person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of a ~~handicapping~~ disabling condition. In the area of structural modifications, this section may be satisfied by compliance with the North Carolina Building Code.

"§ 168A-7. Discrimination in public service.

It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified ~~handicapped~~ person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations do not impose an undue hardship on the entity involved.

"§ 168A-8. Discrimination in public transportation.

It is a discriminatory practice for any transportation system providing transportation to the general public to fail to ensure access to and the benefits of public transportation to a qualified ~~handicapped person;~~ person with a disability; however, public transportation systems may use alternative methods to provide transportation for ~~handicapped persons,~~ persons with a disability, as long as ~~handicapped~~ persons with a disability are offered transportation that, in relation to the transportation offered to other persons, is:

(1) In a similar geographic area of operation;

(2) For fares not greater in price;

(3) With similar or no restrictions as to trip purpose;

(4) With reasonable response time; and

(5) With similar hours of operations.

Nothing in this section shall apply to privately owned, local transit or transportation systems existing on October 1, 1985, or to interstate air carriers complying with federal regulations promulgated by the Civil Aeronautics Board and administered by the United States Department of Transportation.

"§ 168A-9. Affirmative defenses.

Any employer may assert affirmative defenses in any action brought under this Chapter. This section shall not create any inference that an employment action which is not listed as an affirmative defense is therefore, by implication, a discriminatory practice, so long as the employment action is not otherwise prohibited by this Chapter. The following is a non-exclusive list of affirmative defenses:

(1) The ~~qualified handicapped person's~~ failure of the qualified person with a disability to comply with or meet the employer's work rules and policies or performance standards, provided that such person is not held to rules or standards different from other ~~non-handicapped~~ employees without a disability similarly employed;

(2) The ~~qualified handicapped person's~~ excessive, willful or habitual tardiness or ~~absence;~~ absence of a qualified person with a disability, provided that the standard used by the employer in determining whether such tardiness or absence is excessive is the same as that applied by the employer to ~~non-handicapped~~ employees without a disability similarly employed; or

(3) A bona fide seniority or merit system, or a system which measures earnings by quantity or quality of work or production, or differences in location of employment.

"§ 168A-10. Retaliation prohibited.

No employer shall discharge, expel, refuse to hire, or otherwise discriminate against any person or applicant for employment, nor shall any employment agency discriminate against any person, nor shall a labor organization discriminate against any member or applicant for membership because such person has opposed any practice made a discriminatory practice by this Chapter or because he has testified, assisted or participated in any manner in proceedings under this Chapter.

"§ 168A-11. Civil action.

(a) A ~~handicapped~~ person with a disability aggrieved by a discriminatory practice prohibited by G.S. 168A-5 through 168A-8, or a person aggrieved by conduct prohibited by G.S. 168A-10, may bring a civil action to enforce rights granted or protected by this Chapter against any person described in G.S. 168A-5 through 168A-8 or in G.S. 168A-10 who is alleged to have committed such practices or engaged in such conduct. The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury.

(b) Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization. In a civil action brought to enforce provisions of this Chapter relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this Chapter. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable.

(c) No court shall have jurisdiction over an action filed under this Chapter where the plaintiff has commenced federal judicial or administrative proceedings under Section 503 or Section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. §§ 793 and 794, as amended, or federal regulations promulgated ~~thereunder,~~ under those sections; or under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., as amended, or federal regulations promulgated under that Act, involving or arising out of the facts and circumstances involved in the alleged discriminatory practice under this Chapter. If such proceedings are commenced after a civil action has been commenced under this Chapter, the State court's jurisdiction over the civil action shall end and the action shall be forthwith dismissed.

(d) In any civil action brought under this Chapter, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as part of costs.

"**§ 168A-12. Statute of limitations.**

A civil action regarding employment discrimination brought pursuant to this Chapter shall be commenced within 180 days after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. A civil action brought pursuant to this Chapter regarding any other complaint of discrimination shall be commenced within two years after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct."

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

House Committee
on
Ways and Means

Minutes
April 26, 1999
5:00 p.m.

The House Ways and Means Committee met at 5:00 p.m. on Monday, April 26, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and announced that **HB 964 (Municipal Incorporation Process)** would be removed from the agenda.

Rep. Mary McAllister was recognized to explain **HB 898 (Child Bicycle Safety Act)** to the Committee. She explained that the bill would require the use of certain safety equipment by children while they are bicycle operators or passengers. It makes it unlawful for anyone under the age of 18 to operate a bicycle (or be a passenger on a bicycle) on a public roadway, bicycle path, or other right-of-way unless at all times the person wears a protective helmet of good fit fastened securely. It provides that a person must be able to maintain an erect seated position on the bicycle and either (1) occupy a regular seat on the bicycle or (2) if less than 40 pounds in weight or 40 inches in height, be properly seated in and secured to a restraining seat. It also makes it unlawful for a parent or legal guardian to knowingly let a person under 18 ride on a bicycle in violation of the statute, for anyone to lease or rent a bicycle for use by a person under 18 unless the person has in his possession a helmet or a helmet is rented with the bicycle.

The bill provides that a violation results in a $10 fine, except that on first offense the fine may be waived on proof that no negligence or liability may be assessed or imputed to any party on account of a violation of these provisions.

Rep. Mary Jarrell moved to amend the bill and her motion passed.

Paula Wolfe, Director of the Covenant for North Carolina's Children spoke in favor of the bill.

Rep. Wilson moved to incorporate the bill and amendment into a committee substitute, give the committee substitute a favorable report, and an unfavorable report to the original bill. The motion passed.

HB 454 (Simplify Bid Process/Cap. Proj.) introduced by Rep. Cary Allred was before the Committee for consideration. Rep. Allred was recognized to explain the bill. He distributed a proposed committee substitute to the members and Rep. Phil Haire moved for its adoption. His motion passed.

Several committee members had concerns about the bill. Rep. McCombs wondered if this bill just pertains to Alamance County. Rep. Cox felt the bill was setting a bad precedent and that allowing one county to do this would make a "patchwork" situation in the state.

The bill was temporarily displaced.

HB 843 (Orange/Chapel Hill Local Act) was before the Committee. Rep. Joe Hackney was recognized to explain the bill.

He said this bill was introduced to clarify the authority of Orange County to require by ordinance certain notice of pesticide application, to authorize Orange County to regulate by ordinance the emission of pollutants or contaminants, and to authorize the Town of Chapel Hill to regulate the time, number, and size of private development projects under construction within a specified watershed.

Glen Jernigan representing the Agricultural Alliance of North Carolina said this bill circumvents current laws and is opposed by the Farm Bureau and the Home Builders Association.

Rep. Haire proposed three amendments to the bill and his motions passed. Rep. Michaux made a motion to incorporate the amendments into a committee substitute bill, to give that committee substitute bill a favorable report and the original bill an unfavorable report. His motion passed.

HB 985 (State Leases in a Unique Location) was before the Committee for consideration. Rep. William Wainwright was recognized to explain the bill and he distributed a proposed committee substitute to the members for adoption. Rep. Michaux moved for adoption an the motion passed.

Committee Legal staff, Tim Hovis, explained how the Committee Substitute for HB 985 incorporated sections of **HB 984 (Advertisement of State Leases Ltd.)** and **HB 983 (Property transfers to Nonprofits)** as well as the original **HB 985.** It makes the following changes to the first edition: Changes title to "TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS. It further amends GS 146-25.1(a) to increase the amount of a lease for which the Department of Administration is required to advertise from $12,000 to $25,000 per year. It also amends GS 146-26.1(c) to require that for property to be sold or leased at less than market value to a non-profit, the property must be used in connection with the non-profit's tax exempt purpose and not in connection with its unrelated trade or business. It further amends GS 146-32.(3) to add as a condition for exempting a lease from requirements of GS Ch. 146 that the lease requires a unique location or a location that adjoins or is in close proximity to an existing rental location.

Committee discussion followed. Rep. Decker asked for an interpretation of a "unique location." Staff responded that it was "something like a tower."

Rep. Michaux moved to give the committee substitute a favorable report and the original bill an unfavorable report. His motion passed.

HB 1149 (Modular Construction requirements) was before the Committee for consideration. Rep. Maggie Jeffus was recognized to explain the bill. She explained that this bill would provide that a general contractor license is required for the erection of a modular building, It would allow a person to be licensed as either a general or set-up contractor, however, if the building is for commercial use and other conditions in GS 143.1 are met.

When she had concluded her explanation, Mike Carpenter from the Home Builders' Association spoke in favor of the bill. Rep. Nesbitt asked if there were any losers in the bill and Mr. Carpenter explained that under the present definition of manufactured modular structures, one can post a $1000 bond and erect a modular structure worth any amount of money.

Frank Gray from the Manufactured Housing Institute was recognized and told the Committee that he had serious concerns about the bill.

Further discussion ensued and the bill was temporarily displaced.

HB 1071 (Handicapped Law Changes) was before the Committee for consideration. Rep. Martha Alexander was recognized to explain the bill.

Rep. Alexander explained that the bill was a recommendation of the Governor's Advocacy Council for Persons with Disabilities. The bill makes several changes as a result of the Americans with Disabilities Act. It removes the word "handicapped" throughout the relevant statutes and substitutes the phrase "persons with a disability." There are three substantive changes made in this bill:

1) Modifies the definition of "major Life activities" to include working.
2) Does not allow a state court to have jurisdiction over a case filed under Chapter 168 A when a person has filed an action of the Americans with Disabilities Act.
3) Increases the statute of limitations for civil actions filed under Chapter 168A, which do not involve employment discrimination to 2 years.

Upon the conclusion of her remarks Rep. Mickey Michaux moved to amend the bill and his motion passed. Rep. Buchanan made a motion to incorporate the amendment and the original bill into a committee substitute, to give the committee substitute a favorable, original bill an unfavorable report. The motion passed.

HB 1000 (Addiction Research Authority) was before the Committee. Rep. Alexander was recognized to explain the bill. She said HB 1000 repeals the current Alcoholism Research Authority and replaced it with a new Addiction Research Authority. The Authority will consist of a 15 member board. The Governor will appoint the following: representatives of each of the four medical schools; a representative of the School of Public Health at UNC-CH; a representative from the Cannon Research Center, a recovering addict or person who has a special interest in addition; two representatives from the scientific community who are specialists in the bio-psychosocial aspects of addiction; a representative of the addiction field; and, three representatives who are faculty members at UNC campuses that do not have medical schools, two of whom must be from historically black colleges. The Speaker of the House and the President Pro Tempore of the Senate will each appoint a member who is a recovering addict or who has a special interest in addiction research.

She said further that the Authority will be responsible for promoting and supporting research on alcohol and other drug abuse; receiving funds for and administering the Addiction research Fund grant program; disseminating research and findings; and cooperating with the Department of Health and Human Services and other State agencies. The Authority will be staffed by the Governor's Institute on Alcohol and Substance Abuse. The Institute will be responsible for implementing and monitoring the grants programs; facilitating the dissemination of research finds; and any other functions as directed by the Board.

Rep. Michaux moved to give the bill a favorable report and to re-refer it to the Committee on Appropriations. His motion passed.

The meeting adjourned at 6:52 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 26, 1999
Room 1228/1327

5:00 p.m.
Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 454 Simplify Bid Process/Cap. Proj. **(Allred)**
HB 843 Orange/Chapel Hill Local Act **(Insko)**
HB 898 Child Bicycle Safety Act **(McAllister)**
HB 942 Protect Child Performers **(Goodwin)**
HB 964 Municipal Incorporation Process **(Jarrell)**
HB 983 Property Transfers to Nonprofits **(Wainwright)**
HB 984 Advertisement of State Leases Ltd. **(Wainwright)**
HB 985 State Leases in a Unique Location **(Wainwright)**
HB 1000 Addiction Research Authority **(Alexander)**
HB 1071 Handicapped Law Changes **(Alexander)**
HB 1092 Social Worker Immunity/Defense **(Howard)**
HB 1145 Close Loophole Min. Housing Stand. **- 2 (Michaux)**
HB 1149 Modular Construction Requirements **(Jeffus)**
HB 1164 Energy Savings Contracts **(Luebke)**
HB 1173 Personal Information Disclosures **(McCrary)**
HB 1195 Special needs Commission Modified **(Rogers)**
HB 1213 Sunset/Energy Savings Contracts **(Rogers)**

ADJOURNMENT

4/26/99 H

HOUSE BILL 1071:
Handicapped Law Changes

BILL ANALYSIS

Committee: House Ways & Means
Date: April 26, 1999
Version: 1

Introduced by: Representative Alexander
Summary by: Jo B. McCants
Staff Attorney

SUMMARY: ***This bill is a recommendation of the Governor's Advocacy Council for Persons with Disabilities. The bill makes several changes as a result of the Americans with Disabilities Act. The bill removes the word "handicapped" throughout the relevant statutes and substitutes the phrase "persons with a disability." There are three substantive changes made in this bill:***

1) Modifies the definition of "major life activities" to include working.

2) Does not allow a state court to have jurisdiction over a case filed under Chapter 168A when a person has filed an action under the Americans with Disabilities Act.

3) Increases the statute of limitations for civil actions filed under Chapter 168A, which do not involve employment discrimination to 2 years.

BILL ANALYSIS:

The first substantive change to the law would add the word "***work***" to the meaning of "major life activities" is in accord with the Americans with Disabilities Act. Current law defines "major life activities" as functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing and learning.

The second substantive change to the law would not allow a state court to have subject matter jurisdiction over cases that involve a violation of Chapter 168A (Persons with Disabilities Protection Act), when a federal action has been filed under the American with Disabilities Act. Current law does not allow state courts to have jurisdiction over cases involving a violation of Chapter 168A when any federal judicial or administrative proceedings are filed under specific sections of the Vocational Rehabilitation Act of 1973 or other specific federal regulations.

The third substantive change to the law would allow a person to bring a civil action under the state's Persons with Disabilities Protection Act regarding a complaint of discrimination that does not allege employment discrimination within 2 years after the date the aggrieved person became aware of, or with reasonable diligence, should have become aware of the alleged discrimination. Civil actions that allege employment discrimination must be commenced within 180 days of the date on which the aggrieved person became aware of, or with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. Current law requires that **all** civil actions brought under the state's Persons with Disabilities Protection Act must be commenced within 180 days.

This act becomes effective on October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1071

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1071-ASC-001.1

Date 4-26-99 ,1999

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

Representative _____ :

moves to amend the bill on page 9, line 29,
by rewriting the line to read:

"Section 2. This act becomes effective October 1, 1999, and applies to actions filed on or after that date.".

SIGNED _____
Amendment Sponsor

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

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1000

Short Title: Addiction Research Authority. (Public)

Sponsors: Representatives Alexander; and Smith.

Referred to: Ways and Means, if favorable, Appropriations.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA ADDICTION RESEARCH AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Part 3 of Article 6 of Chapter 122C of the General Statutes is repealed.

Section 2. Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 32. North Carolina Addiction Research Authority.

"**§ 143B-216.57. North Carolina Addiction Research Authority created; purpose; duties.**

(a) There is created the North Carolina Addiction Research Authority. The purpose of the Authority is to promote knowledge about the causes and characteristics of the misuse and abuse of and addiction to alcohol and other drugs.

(b) The North Carolina Addiction Research Authority shall have the following duties and responsibilities:

(1) Promote and support research on alcohol and other drug abuse. The research shall include:

a. Basic research related to biomedical, behavioral, and psychosocial functions;

b. Clinical research related to treatment and prevention; and

c. Health services research and outcome studies related to the delivery of services;

(2) Administer the Addiction Research Fund created under this Part;

(3) Seek funds from State, federal, private, and other sources through grants, contracts, donations, and other similar means, and also foster opportunities for researchers in North Carolina to pursue other sources of funding;

(4) Facilitate dissemination of research findings and collaboration among the research community and treatment sites, and make findings available to the general public; and

(5) Cooperate with the Substance Abuse Services section of the Department of Health and Human Services and other units of State government to pursue mutual research interests.

"**§ 143B-216.58. Authority governance; administration.**

(a) The North Carolina Addiction Research Authority shall be governed by a 15-member board. The board shall be comprised of the following members:

(1) One representative from each of the four medical schools in North Carolina, appointed by the Governor upon the recommendation of the dean of each medical school;

(2) One representative from the School of Public Health of the University of North Carolina at Chapel Hill, appointed by the Governor upon the recommendation of the dean of the School of Public Health;

(3) One representative from the Cannon Research Center in the Carolinas Medical Center in Charlotte, appointed by the Governor upon the recommendation of the Director of the Center;

(4) One representative of the general public who is a recovering addict or who has a special interest in addiction research, appointed by the Governor;

(5) One representative of the general public who is a recovering addict or who has a special interest in addiction research, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;

(6) One representative of the general public who is a recovering addict or who has a special interest in addiction research, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;

(7) Two representatives from the general scientific community who are specialists in the biopsychosocial aspects of addiction, appointed by the Governor upon the recommendation of the President of the North Carolina Society of Addiction Medicine;

(8) One representative from the addiction field, appointed by the Governor upon the recommendation of the President of the Addiction Professionals of North Carolina; and

(9) Three representatives from the field of social sciences who are faculty members at campuses of The University of North Carolina not represented in subdivisions (1) and (2) of this section, at least

two of whom shall be from historically black colleges or universities, appointed by the Governor upon the recommendation of the President of The University of North Carolina.

The initial term of persons appointed under subdivisions (1) and (3) of this subsection shall be for two years; the initial term of persons appointed under subdivisions (7) and (9) shall be for one year; and the initial terms of persons appointed under subdivisions (2), (4), (5), (6), and (8) shall be for three years. Thereafter all terms shall be for three years. Vacancies on the board shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(b) The board shall elect one of its members as chair and one as vice-chair. The Director of the Governor's Institute on Alcohol and Substance Abuse shall serve ex officio as executive secretary to the Authority. The Institute shall perform the following functions:

(1) Implement and monitor competitive grants programs which shall be open to qualified North Carolina-based organizations. The grants programs shall utilize generally accepted peer review processes;

(2) Facilitate the dissemination of research findings through various means such as conferences, publications, and networks; and

(3) Other functions as directed by the board.

(c) The Authority may adopt rules establishing the grant review process and providing for the review of grant applicants and awarding of grant funds.

"**§ 143B-216.59. Authorization to receive and spend funds.**

The North Carolina Addiction Research Authority may receive funds from State, federal, and private or other sources. These funds shall be deposited to a separate fund designated as the 'Addiction Research Fund'. The Authority shall use monies from the Fund for a competitive grants program to promote and support research on alcohol and other drug abuse under conditions determined by the Authority. The Authority may use monies from the Fund for administrative costs to carry out its duties and responsibilities under this Part."

Section 3. There is appropriated from the General Fund to the North Carolina Addiction Research Fund the sum of one hundred thousand dollars ($100,000) for the 1999-2000 fiscal year and the sum of one hundred thousand dollars ($100,000) for the 2000-2001 fiscal year to implement this act.

Section 4. This act becomes effective July 1, 1999.

4/26/99

HOUSE BILL 1000:
Addiction Research Authority

BILL ANALYSIS

Committee: House Ways & Means
Date: April 26, 1999
Version: First Edition

Introduced by: Representative Alexander
Summary by: Mary Shuping
Research Assistant

SUMMARY: ***House Bill 1000, Addiction Research Authority, repeals the current Alcoholism Research Authority and establishes the Addiction Research Authority to support research on alcohol and other drug abuse, administer the Addiction Research Fund, seek funds from other sources, disseminate research findings, and cooperate with the Department of Health and Human Services and other State agencies to pursue research.***

CURRENT LAW: Current law provides for the NC Alcoholism Research Authority which is a nine member board appointed by the Governor. The Authority receives funds from State, federal, private or other sources. The funds are to be spent on research on the causes and effects of alcohol abuse and for the training of alcohol research personnel, and the Authority provides grants to nonprofit corporations, organizations, agencies, or institutions engaging in this type of research or training.

The Center for Alcohol Studies at UNC-CH provides staff to the Authority and processes grant applications and makes recommendations as to the awarding of grants.

BILL ANALYSIS: House Bill 1000 repeals the current Alcoholism Research Authority and replaces it with a new Addiction Research Authority. The Authority will consist of a 15 member board. The Governor will appoint the following: representatives of each of the four medical schools; a representative of the School of Public Health at UNC-CH; a representative from the Cannon Research Center; a recovering addict or person who has a special interest in addiction; two representatives from the scientific community who are specialists in the biopsychosocial aspects of addiction; a representative of the addiction field; and, three representatives who are faculty members at UNC campuses that do not have medical schools, two of whom must be from historically black colleges. The Speaker of the House and the President Pro Tempore of the Senate will each appoint a member who is a recovering addict or who has a special interest in addiction research.

The Authority will be responsible for promoting and supporting research on alcohol and other drug abuse; receiving funds for and administering the Addiction Research Fund grant program; disseminating research findings; and cooperating with the Department of Health and Human Services and other State agencies.

The Authority will be staffed by the Governor's Institute on Alcohol and Substance Abuse. The Institute will be responsible for implementing and monitoring the grants programs; facilitating the dissemination of research findings; and any other functions as directed by the board.

House Bill 1000 also appropriates $100,000 for SFY 1999-2000, and $100,000 for SFY 2000-2001 to implement the act.

EFFECTIVE DATE: The act is effective on July 1, 1999.

Information from the April 13, 1999 *Daily Bulletin,* published by the Institute of Government, was used in this summary.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **April 26, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alina Gregory	Poyner & Spruill
Katherine Davis	Electricities
Crissi Porter	Bone & Associates
Wayne Woodard	Dept. of Justice
[illegible]	DOJ
Kathryn Sawyer	Commerce
Charlie Harris	DHHS / DSS
Steve Woodson	NC Farm Bureau
Cam Cowan	BPMHC
Bob Slocum	NC Forestry Assoc.
Stephanie Mansun	NC Assoc. of REALTORS
Rupert Conyers	State Property
June Michaux	State Property
Joe Henderson	State Property
F. Carlyle Sloan	Cooperation Council / Ag Alliance
[illegible]	Kaylon Law Firm
John McAlister	Duke Energy
Jon Wilson	NCATLC
[illegible]	NCPC
Marie Mileaf	NCANPHA
Mike Carpenter	NCABA

VISITOR REGISTRATION SHEET

Ways & Means — 4-26-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Paula A. Wolf	Covenant w/NC's Children
2.	~~Dena Jennifer~~	Agricultural Alliance of N.C.
3.	Henry Jones	Attorney - Raleigh
4.	Spencer Clark	NC DMH/DD/SAS
5.	Thomas (TC) Adams	NC Commerce / Energy
6.	Ed Regan	N.C. Assoc. of Co. Comm.
7.		
8.		
9.		
10.		
11.		
12.		
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15.		
16.		
17.		
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20.		
21.		

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 898 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHILE THEY ARE BICYCLE OPERATORS OR PASSENGERS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 843 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTHORITY OF ORANGE COUNTY TO REQUIRE BY ORDINANCE CERTAIN NOTICE OF PESTICIDE APPLICATION, TO AUTHORIZE ORANGE COUNTY TO REGULATE BY ORDINANCE THE EMISSION OF POLLUTANTS OR CONTAMINANTS, AND TO AUTHORIZE THE TOWN OF CHAPEL HILL TO REGULATE THE TIMING, NUMBER, AND SIZE OF PRIVATE DEVELOPMENT PROJECTS UNDER CONSTRUCTION WITHIN A SPECIFIED WATERSHED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 985 A BILL TO BE ENTITLED AN ACT TO SIMPLIFY THE LAW REGARDING STATES LEASES OF PROPERTY IN UNIQUE OR PREDETERMINED LOCATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 1071 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE HANDICAPPED PERSONS PROTECTION ACT, CHAPTER 168A OF THE GENERAL STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 1000 A BILL TO BE ENTITLED AN ACT TO CREATE THE NORTH CAROLINA ADDICTION RESEARCH AUTHORITY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

House Committee
on
Ways and Means

Minutes
April 27, 1999

The House Ways and Means Committee met on Tuesday, April 27th at 1:00 p.m. in Room 1425 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order.

HB 1195 (Special Needs Commission Modified) was before the Committee and Rep. Gene Rogers was recognized to explain the bill.

He said that the bill changes the name of the "Commission on Children with Special Needs" to the "Commission on Children with Disabilities." The bill also changes the composition of the Commission to provide that all members will be appointed by the General Assembly. The Commission's duties are expanded to include making recommendations regarding funding and laws for children with disabilities. Finally, the bill makes changes regarding the time of appointments and the content and reporting date for reports issued by the Commission and makes other technical changes.

Committee discussion followed . Rep. Michaux made a motion to give the bill a favorable report and to re-refer the bill to the Committee on Rules. The motion passed.

Rep. Michaux was asked to preside. He recognized Rep. Jean Preston to explain HB **1209 (Personal Watercraft Safety)** which was next before the Committee. She explained that the bill would prohibit the operation of personal watercraft after sunset and before sunrise (was, one hour after sunset and one hour before sunrise). The bill continues to allow persons aged 13 or older, but under the age of 16, to operate personal watercraft, but requires these persons to be accompanied by someone at least 18 years old, rather than 16 years as in the current law. The bill also requires persons under the age of 16 to carry identification and boater safety certification card while operating personal watercraft and to produce identification and certification cards on request of a wildlife or local law enforcement officer. HB 1209 would also provide that a violation is an infraction under GS 75A-18. The bill would also required rental agents who rent personal watercraft to the public to carry liability insurance of at least $1,000,000; that to violate this provision is a Class 2 misdemeanor, punishable by fine up to $1,000. The bill would also required that persons operating personal watercraft wear certain flotation devices. It prohibits towing of another person behind personal watercraft unless an observer is on board in addition to the operator and the number of persons on the personal watercraft does not exceed the maximum number of persons recommended by the manufacturer. The bill would also prohibit jumping of wake of another vessel within 1000 feet of that vessel (was, when unreasonable or unnecessarily close). Further, the bill would prohibit operating personal watercraft at greater than no-wake speed in areas

specified in new GS 75!-13.3(e)(4); also prohibits operating personal watercraft contrary to the rules of the road and from following too closely as defined in new GS 75A-13.3(e)(5). It also repeals other sections of GS 75A-13.3.

Considerable discussion followed. Rep. Cox moved to amend the bill and his amendment was adopted.

The bill was temporarily displaced.

HB 1149 (Modular Construction Requirements) was before the Committee having been carried over from the April 26th meeting. Rep. Jeffus, the bill sponsor, was recognized and distributed a committee substitute to the Committee for adoption. Rep. Michaux moved that the committee substitute be adopted. His motion passed. He then moved to give the Committee Substitute a favorable report, the original bill an unfavorable report. That motion also passed.

HB 1092 (Social Worker Immunity/Defense), sponsored by Rep. Julia Howard, was before the Committee. Rep. Howard was recognized and explained that this bill would require the State to defend certain county social workers from liability arising from the good faith performance of their official duties.

Committee discussion followed. Rep. Starnes asked who in the State of North Carolina currently has immunity from liability. Tim Hovis, committee staff, responded that Public official and ombudsmen currently have immunity.

Rep. Howard said the main objective of the bill was to assure an adequate number of social workers in Child Protective Services, that it is difficult to recruit and to keep social workers in that area.

Rep. Starnes moved to amend the bill, but his motion failed. Rep. Michaux felt that this was a very serious issue that should be studied. He then moved for a favorable report, but this motion failed.

HB 1173 (Personal Information Disclosures) was before the Committee and Rep. McCrary was recognized to explain the bill.

He said the bill would limit disclosure of personal information contained in applications for licenses issued by the Private Protective Services Board and the Alarm Systems Licensing Board and would authorize the Alarm Systems Licensing Board to issue an apprenticeship registration permit.

Rep. Michaux proposed two amendments to the bill which were adopted. He then moved to incorporate the amendments and original bill into a committee substitute bill, to give that bill a favorable report, unfavorable to original bill. The motion passed.

HB 1209 (Personal Watercraft Safety) was back before the Committee. Rep. Preston was recognized, as was ex-officio committee member, Rep. Beverly Earle. Rep. Earle said she thought this was a good bill and would like for the committee to pass it. Rep. Mia Morris move to incorporate the amendment and original bill into a committee substitute bill, give the committee substitute a favorable report, unfavorable to original bill. The motion passed.

There being no further business, the Committee adjourned at 2:40 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
April 27, 1999
Room 1425

1:00 p.m.
Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 1092 Social Worker Immunity/Defense **(Howard)**
HB 1149 Modular Construction Requirements **(Jeffus)**
HB 1173 Personal Information Disclosures **(McCrary)**
HB 1195 Special needs Commission Modified **(Rogers)**
HB 1209 Personal Watercraft Safety **(Preston)**

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1195

Short Title: Special Needs Commission Modified. (Public)

Sponsors: Representative Rogers.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE COMMISSION ON CHILDREN WITH SPECIAL NEEDS.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 120 of the General Statutes reads as rewritten:

"ARTICLE 12.

"Commission on Children ~~with Special Needs.~~ With Disabilities.

"§ 120-58. Creation; appointment of members.

There is created a Commission on Children with ~~Special Needs~~ Disabilities to consist of ~~three Senators and one physician licensed to practice in the State of North Carolina, and who is actively involved in the private practice of pediatrics,~~ six Senators, one parent of a child with disabilities, and one school board attorney appointed by the President Pro Tempore of the ~~Senate, three Representatives and one public member appointed by the Speaker of the House, three parents of children with special needs and one public member appointed by the Governor, and the Superintendent of Public Instruction or the Superintendent's designee.~~ Senate; and six members of the House, one parent of a child with disabilities, and one other public member appointed by the Speaker of the House. The appointing officers shall each designate a member of the Commission to serve as cochairs.

"§ 120-59. Time of appointments; terms of office.

Appointments to the Commission shall be made within 15 days ~~subsequent to the close of each regular session of the~~ of the convening of each General Assembly. The term of office shall begin on the day of appointment, and shall end on the date when

the next appointments are made. Vacancies occurring during a term shall be filled for the unexpired term by the officer who made the original appointment.

"**§ 120-60. Organization of Commission.**

~~Upon its appointment, the Commission shall organize by electing from its membership a chairman.~~ The Commission shall meet at such times and places as the ~~chairman~~ cochairs shall designate. The facilities of the State Legislative Building shall be available to the Commission. The Commission is authorized to conduct hearings and to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties, with the approval of the Legislative Services Commission.

"**§ 120-61. Members to serve without compensation; subsistence and travel expenses.**

Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose.

"**§ 120-62. Assistance to Commission.**

The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance.

"**§ 120-63. Duties of Commission.**

The Commission is hereby authorized to:

(1) Pursue an in-depth study of the services provided by other states for children with ~~special needs.~~ disabilities.

(2) Collect and evaluate for comprehensiveness existing legislation in North Carolina which is relevant to programs for children with ~~special needs;~~ disabilities; as well as pertinent reports, studies and findings from other states and national bodies.

(3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children with ~~special needs.~~ disabilities.

(4) Monitor on a continuing basis the progress of the State as it moves toward meeting the service requirements for children with ~~special needs.~~ disabilities.

(5) Make recommendations on funding needed to provide services to children with disabilities.

(6) Make recommendations regarding changes needed in State law regarding children with disabilities.

"**§ 120-64. Reports to General Assembly.**

The Commission shall make a report ~~to the General Assembly not later than February 1, 1975, and February 1 of each subsequent session.~~ on the convening of

each General Assembly in each odd-numbered year and may make a report to the General Assembly prior to March 15 of each even-numbered year. ~~The first report shall contain:~~

~~(1) A comparison of services provided by the State with those services provided by other states.~~

~~(2) Legislation designed to strengthen the role of the State in meeting its responsibilities to children with special needs.~~

~~Subsequent reports shall contain quantifiable statements of accomplishments by providers of service and any additional legislation deemed necessary.~~

~~The report of 1979 shall contain a review of the effectiveness of the Commission and a recommendation concerning further retention of the Commission.~~

"**§ 120-65. Assistance of Department of Health and Human Services, State Board of Education, and Department of Public Instruction.**

The Department of Health and Human Services, the State Board of Education, and the Department of Public Instruction are vital departments of State government to assist especially the Commission and to furnish it with information, and to the extent permitted by the Commission, to participate actively in the work and deliberations of the Commission.

"**§§ 120-66 through 120-70**: Reserved for future codification purposes."

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

4/27/99

HOUSE BILL 1195:
Special Needs Commission Modified

BILL ANALYSIS

Committee: House Ways & Means
Date: April 26, 1999
Version: First Edition

Introduced by: Representative Rogers
Summary by: Mary Shuping
Research Assistant

SUMMARY: ***House Bill 1195, Special Needs Commission Modified, changes the name of the "Commission on Children with Special Needs" to the "Commission on Children with Disabilities". The bill also changes the composition of the Commission to provide that all members will be appointed by the General Assembly. The Commission's duties are expanded to include making recommendations regarding funding and laws for children with disabilities. Finally, the bill makes changes regarding the time of appointments and the content and reporting date for reports issued by the Commission and makes technical changes.***

CURRENT LAW: The current Commission on Children with Special Needs is comprised of 12 members appointed by the President Pro Tempore of the Senate, the Speaker of the House, and the Governor. The Superintendent of Public Instruction, or the Superintendent's designee, also serves as a member. The chair is elected by the Commission. The Commission currently monitors and studies services provided by North Carolina and other states for children with special needs.

BILL ANALYSIS: House Bill 1195 changes the composition of the Commission to 16 members, all appointed by the General Assembly, as follows: six Senators, one parent, and one school board attorney appointed by the President Pro Tem., and six Representatives, one parent, and one public member appointed by the Speaker of the House. The bill also provides that the President Pro Tem. and the Speaker will each designate a co-chair. House Bill 1195 also expands the Commission's duties to include making recommendations on funding needs and changes in State law regarding children with disabilities. The Commission is to report to the General Assembly on the convening of each odd-numbered year, and prior to March 15th of each even-numbered year. Finally, House Bill 1195 changes the name of the "Commission on Children with Special Needs" to the "Commission on Children with Disabilities" and makes technical changes throughout.

EFFECTIVE DATE: House Bill 1195 is effective when it becomes law.

Information from the April 15, 1999 *Daily Bulletin*, published by the Institute of Government, was used in this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1209

Short Title: Personal Watercraft Safety. (Public)

Sponsors: Representative Preston.

Referred to: Wildlife Resources, if favorable, Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

4/27/99

April 15, 1999

H 1209. PERSONAL WATERCRAFT SAFETY. *TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.* Amends GS 75A-13.3 on personal watercraft as follows. Prohibits operation of personal watercraft after sunset and before sunrise (was, one hour after sunset and one hour before sunrise). Continues to allow person age 13 or older but under age 16 to operate personal watercraft but requires person to be accompanied by someone at least 18 years old (was, 16). Requires person under age 16 to carry identification and boater safety certification card while operating personal watercraft and to produce identification and certification card on request of wildlife or local law enforcement officer; provides that violation is infraction under amended GS 75A-18. Requires livery that rents personal watercraft to public to carry liability insurance of at least $1,000,000; provides that violation is Class 2 misdemeanor, punishable by fine up to $1,000 under amended GS 75A-18. Requires persons operating personal watercraft to wear type I, II, III, or V flotation device and provides that inflatable flotation devices do not satisfy this requirement. Prohibits towing of another person behind personal watercraft unless an observer is on board in addition to the operator and the number of persons on the personal watercraft does not exceed the maximum number of persons recommended by the manufacturer. Prohibits jumping of wake of another vessel within 100 feet of vessel (was, when unreasonably or unnecessarily close). Prohibits operating personal watercraft at greater than no-wake speed in areas specified in new GS 75A-13.3(e)(4); also prohibits operating personal watercraft contrary to rules of road and following too closely as defined in new GS 75A-13.3(e)(5). Repeals subsection (g) of GS 75A-13.3, which limited application of section to certain waters within state; also repeals GS 75A-13.2, the current section on personal watercraft.

Intro. by Preston.

Ref. to Wildlife Resources GS 75A

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1209 DATE 4-29-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Cox
Sen.)

moves to amend the bill on page 3, lines 33-34

( ) WHICH CHANGES THE TITLE

by deleting those lines;

and on page 3, line 35;

by deleting "(c2)" and substituting "(c1)";

and on page 3, line 39,

by rewriting the line to read:

"Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

4-2799

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1149
PROPOSED COMMITTEE SUBSTITUTE H1149-CSSB-002
10:52:05 EZT / 27-APR-99

ATTENTION: Line numbers may change after adoption.

Short Title: Modular Construction Requirements. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A GENERAL CONTRACTOR LICENSE IS REQUIRED FOR THE ERECTION OF A MODULAR BUILDING AND TO PROVIDE LIMITED EXEMPTIONS FROM THIS REQUIREMENT FOR CERTAIN RESIDENTIAL AND COMMERCIAL MODULAR STRUCTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-1 reads as rewritten:

"§ 87-1. 'General contractor' defined; exceptions.

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($30,000) or more, or undertakes to erect a ~~North Carolina labeled manufactured~~ modular building meeting the North Carolina State Building Code, shall be deemed to be a "general

contractor" engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plan equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs or alters a building on land owned by that person, firm or corporation provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and provided further that, if such building is not occupied solely by such person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend such building solely for occupancy by that person and his family, firm, or corporation.

This section shall not apply to any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when such building is intended for use by that person after completion.

This section shall not apply to any person that erects a modular building that meets the requirements of G.S. 143-139.1(c) or (d)."

Section 2. G.S. 143-139.1 reads as rewritten:

"**§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing ~~laboratory.~~ laboratory; licensure requirements for certain commercial buildings.**

(a) The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such

reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

(b) A person that erects a modular building shall be licensed as a general contractor pursuant to Chapter 87 of the General Statutes.

(c) Notwithstanding subsection (b) of this section and G.S. 87-1, a person that erects a modular building that meets the requirements of this subsection shall be licensed as either a general contractor under Chapter 87 of the General Statutes or a set-up contractor under Article 9A of this Chapter. The Building Code Council may ~~also~~ adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled ~~manufactured~~ on-frame single-family residential modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect such a modular building, shall provide the code enforcement official proof that he is a licensed set-up contractor under Article 9A of this Chapter and that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings. For purposes of this section, an 'on-frame single-family residential modular building' is a single-family residential modular home which is constructed on a steel frame in accordance with the North Carolina State Building Code and is capable of being transported to the site on its own transportation system.

(d) Notwithstanding subsection (b) of this section and G.S. 87-1, a person that erects a modular building that meets all of the following requirements shall be licensed as either a general contractor under Chapter 87 of the General Statutes or a set-up contractor under Article 9A of this Chapter:

(1) The building is to be erected only for a commercial use.

(2) The building is structurally similar to and transported to the site in the same manner as a manufactured home, as determined by rules adopted by the Building Code Council.

(3) A building consisting of a single unit is no larger than 2,000 square feet. With respect to a modular building consisting of multiple units, each of which meets the requirements of subdivision (2) of this subsection, no single unit is larger than 1,500 square feet, no more than five units are joined together to form the building, and no units are stacked.

(4) When the work is performed by a set-up contractor licensed under Article 9A of this Chapter, G.S. 143-143.12(c) shall also apply to the buyer of the modular building.

(e) Proof of compliance with this section shall be provided to the code enforcement official prior to the issuance of a permit for the erection of the building. The Building Code Council shall adopt rules for the enforcement of this subsection."

Section 3. G.S. 143-143.13(a) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) Material misstatement in application for license;

(2) Failure to post an adequate corporate surety bond, cash bond or fixed value equivalent thereof;

(3) Engaging in the business of manufactured home manufacturer, dealer, salesman or set-up contractor without first obtaining a license from the Board;

(4) Failure to comply with the warranty service obligations and claims procedure established by this Article;

(5) Failure to comply with the set-up and tie-down requirements established by this Article;

(6) Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into licensee's possession arising out of the sale of manufactured homes;

(7) Use of unfair methods of competition or unfair or deceptive commercial acts or practices;

(8) Failure to comply with any provision of this Article;

(9) Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this Article;
(10) Employing unlicensed retail salesmen;
(11) Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article;
(12) Conviction of a felony or any crime involving moral turpitude;
(13) Having had a license revoked, suspended or denied by the Board under this Article; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article;
(14) Knowingly engaging any person to perform set-up operations who is not licensed by the Board as a set-up ~~contractor.~~ contractor;
(15) Failure to comply with the applicable provisions of G.S. 143-139.1."

Section 4. This act becomes effective September 1, 1999.

4/27/99

HOUSE BILL 1149:
Modular Construction Requirements

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Jeffus
Date:	April 27, 1999	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1149 provides that a general contractor's license is required to erect a modular building and it also provides limited exemptions from this requirement for the erection of certain residential and commercial modular buildings.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1149 (PCS) amends G.S. 143-139.1 to provide that a person who erects a modular building must be licensed as a general contractor under the statutes that govern contractors. The PCS also provides two exemptions from this requirement:

- A person licensed as a set-up contractor under the statutes that govern manufactured housing may erect a North Carolina labeled on-frame single-family residential modular building. An "on-frame single-family residential modular building" is a single-family residential modular home constructed on a steel frame in accordance with the North Carolina State Building Code and is capable of being transported to the site on its own transportation system. To secure a permit to erect a building under this exemption, a set-up contractor must provide proof to a code enforcement official that the set-up contractor is licensed as a set-up contractor and that the set-up contractor has a $5,000 surety bond for each modular building to be erected.
- A person licensed as a set-up contractor under the statutes that govern manufactured housing may erect a modular building that is only for commercial use, is structurally similar to and transported in the same manner as a manufactured home, and is below a certain size threshold (2,000 square feet or less for a single unit or 5 or fewer units that are each 1,500 square feet or less and are not to be stacked). A set-up contractor erecting a modular building under this exemption is subject to the $5,000 surety bond requirement of G.S. 143-143.12.

The PCS also authorizes the North Carolina Manufactured Housing Board to deny, suspend, or revoke the license of a set-up contractor who fails to comply with the applicable provisions of G.S. 143-139.1.

EFFECTIVE DATE: This act becomes effective September 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1092

Short Title: Social Worker Immunity/Defense. (Public)

Sponsors: Representatives Howard, Dockham; and Cansler.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE TO DEFEND CERTAIN COUNTY SOCIAL WORKERS FROM LIABILITY ARISING FROM THE GOOD FAITH PERFORMANCE OF THEIR OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

Section 1. Article 31A of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-300.11. Defense of county protective services social workers and county foster care social workers.**

A county social worker currently or formerly employed by a county department of social services performing the official duties of the social worker's position as either the juvenile protective services social worker pursuant to Article 3 of Chapter 7B of the General Statutes, an adult protective services social worker pursuant to Article 6 of Chapter 108A of the General Statutes, or a foster care social worker performing duties assigned or delegated by the county director of social services pursuant to G.S. 108A-14(12) of the General Statutes, shall be defended by the Attorney General, subject to G.S. 143-300.4 and notwithstanding G.S. 143-300.5 of the General Statutes. The social worker shall be protected from liability in accordance with the provisions of this Article, in any civil or criminal action or proceeding brought against the social worker in the social worker's official or individual capacity, or both, on account of an act done or omission made in good faith in the scope and course of carrying out the provisions of either Article 3 of Chapter 7B, Article 6 of Chapter 108A, or G.S. 108A-14(12) of the General Statutes. In any proceeding involving liability, good faith on the part of the social worker shall be presumed and the burden of proof shall be

upon the plaintiff to prove that the social worker did not act in good faith. The social worker shall be considered an employee of the Department of Health and Human Services only for the purposes of G.S. 143-300.6 and for purposes of liability coverage under G.S. 58-32-15."

Section 2. This act becomes effective October 1, 1999, and applies to actions arising on or after that date.

April 15, 1999

H 1092. SOCIAL WORKER IMMUNITY/DEFENSE. *TO REQUIRE THE STATE TO DEFEND CERTAIN COUNTY SOCIAL WORKERS FROM LIABILITY ARISING FROM THE GOOD FAITH PERFORMANCE OF THEIR OFFICIAL DUTIES.* Adds new GS 143-300.11 requiring Att'y General to defend, pursuant to GS 143-300.4 and notwithstanding GS 143-300.5, person who is a current or former social worker employed by county dep't of social services performing official duties as child protective services social worker, adult protective services social worker, or foster care social worker. Provides that these social workers are immune, in any criminal or civil proceeding brought against them in their individual or official capacities, for acts or omissions made in good faith and in scope of their official duties. Good faith is presumed; plaintiff has burden of proving social worker did not act in good faith. These social workers will be considered employees of Dep't of Health and Human Services for purposes of GS 143-300.6 and for purpose of liability coverage under GS 58-32-15. Effective Oct. 1, 1999; applies to actions arising on or after that date.

Intro. by Howard and Dockham.

Ref. to Ways & Means GS 143

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1092

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1092-ASE-001

Date 4-27-99 ,1999

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

Rep. Howard

moves to amend the bill on page 1, lines 18 and 19, by rewriting those lines to read:

"The social worker shall be immune from liability in any civil or criminal action or proceeding brought against the social".

SIGNED E. V. Starnes
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1173

Short Title: Personal Information Disclosures. (Public)

Sponsors: Representative McCrary.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-8 is amended by adding a new subsection to read:

"(g) Except for purposes of administering the provisions of this section and for law enforcement purposes, the Board shall not disclose the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number."

Section 2. G.S. 74D-2 is amended by adding a new subsection to read:

"(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the Board shall not disclose the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number."

Section 3. Chapter 74D of the General Statutes is amended by adding a new section to read:

"**§ 74D-8.1. Apprenticeship registration permit.**

(a) The Board may issue an apprenticeship registration permit to an applicant who is 16 or 17 years old if the applicant holds a valid drivers license and submits at least three letters of recommendation stating that the applicant is of good moral character as provided in G.S. 74D-2(d)(2). The letters of recommendation shall be from persons who are not related to the individual and at least one of the letters shall be from an official at the school where the applicant is currently enrolled.

(b) There shall be no fee for an apprenticeship registration permit, and the permit shall expire when the holder attains the age of 18 years old. The denial, suspension, or revocation of an apprenticeship registration permit shall be in accordance with the provisions of Chapter 150B of the General Statutes.

(c) The applicant shall not perform services as authorized under this Chapter until after the Board has reviewed his or her application and issued him or her an apprenticeship registration permit. The holder of an apprenticeship registration permit shall be accompanied by a licensee or registered employee while engaged in activities authorized under this Chapter."

Section 4. This act becomes effective on September 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1173 DATE 4-27-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
)
Sen.)

moves to amend the bill on page 2, line 2

( ) WHICH CHANGES THE TITLE

by adding after the word "old" the words "and currently enrolled in high school";

and on page 2, line 8,
by deleting the "old." and substitute the words "old ~~good~~ or graduates from high school."

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. 1

H. B. No. 1173 DATE 4-27-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Michaux
Sen.)

moves to amend the bill on page 1, line 5 14 and 21

( ) WHICH CHANGES THE TITLE

by adding at the end of those lines:

"Violation of this subsection shall ~~constitute~~ ~~be a~~ a Class 1 misdemeanor."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

4/22/99

April 15, 1999

H 1173. PERSONAL INFORMATION DISCLOSURES. *TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.* Adds new GS 74C-8 and 74D-2, providing that except for administrative and law enforcement purposes, boards cited in title shall not disclose the home address or telephone number of applicants or licensees or their family members without consent, except when the person's home and business address and telephone number are the same. Adds new GS 74D-8.1, authorizing the Alarm Systems Licensing Board to issue apprenticeship registration permit to an applicant who is 16 or 17 years old, if applicant holds a driver's license and submits at least three letters of recommendation as provided in GS 74D-2(d)(2). Requires that holder of an apprenticeship permit be accompanied by a licensed or registered employee while engaging in activities authorized under the Chapter. Effective Sept. 1, 1999.

Intro. by McCrary.

Ref. to Ways & Means GS 74C, 74D

VISITOR REGISTRATION SHEET

WAYS & MEANS — 4/27
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Seamans	NC Social Services Consortium
Pamela Best	AOC
Jim Blackburn	Assoc. County Commrs
Ed Regan	" " "
Andy Romanet	NCLM.
Bryan Beatty	DOJ
Michelle Cook	Weyerhaeuser
Ron Akins	CDANC
Benny Scarboro	Good Neighbors
Frank Gray	NC Man. Housing
Josephine Davis	ElectriCities
Mike Carpenter	NCHBA
Paul Williams	NCHBA
Ashley Westbrook	Governor's Office
Ed Jenkins	NC Wildlife Resources Comm.
Jim Burnette, Jr	NCDA&CS
Jennifer Tolle	Child Fatality Task Force
Melissa Lovell	DOJ
Chuck Harris	DHHS/DSS
Shamyra Kinsome	DHHS/DSS
W.R. Hale	NCDOI
Marshall Propes	"
Stanley McFarlane	"
Suzanne Winiarski	NCCC

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 1195 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE COMMISSION ON CHILDREN WITH SPECIAL NEEDS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1209 A BILL TO BE ENTITLED AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1149 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A GENERAL CONTRACTOR LICENSE IS REQUIRED FOR THE ERECTION OF A MODULAR BUILDING AND TO PROVIDE A LIMITED EXEMPTION FROM THE REQUIREMENT FOR CERTAIN MODULAR COMMERCIAL STRUCTURES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1173 A BILL TO BE ENTITLED AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes
May 5, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, May 5, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Bill Owens called the meeting to order and immediately asked Rep. Phil Haire to preside while Rep. Owens explained **HB 636 (Consumer Service Quality Assurance)** which was first on the agenda.

Rep. Owens explained that HB 636 would establish the Customer Service Quality Assurance program within the State Auditor's office to monitor the performance of State agencies from the perspective of the consumer.

State Auditor Ralph Campbell was recognized to answer any questions the members might have.

Committee discussion followed. Rep. Mary Jarrell proposed to amend the bill and her amendment was adopted.

Rep. Bowie couldn't envision what these three people would do. Rep. McCombs wondered if there was any assurance that this would work. Rep. Owens told him that they would report to the Committee on Governmental Operations. Rep. Pope supported the bill. He added that this is done in the private sector all the time.

Rep. Eddins wondered if this bill would require this program to report on "positive" as well as negative experiences and sent forth an amendment to add that language in the bill. His amendment was also adopted.

Rep. Monroe Buchanan moved to incorporate the two amendments and original bill into a committee substitute bill, give that bill a favorable report, the original bill an unfavorable report and to re-refer the committee substitute to the Committee on Appropriations. The motion passed.

HB 671 (Legislator Guides) was before the committee. Rep. Rick Eddins who was recognized to explain the bill, presented a proposed committee substitute to the Committee and upon motion from Rep. Allen, the committee substitute was adopted.

Rep Eddin said the bill directs the Legislative Services Commission to create a program enrolling volunteer legislators to be available on non-holiday weekdays to greet and address groups touring the General Assembly. The program would only apply when the General Assembly is not in session. Participating legislators would be paid travel and subsistence allowances. The bill also appropriates $24,000 to the Commission to implement the program.

Discussion followed. Rep. Michaux wondered why the appropriation was necessary if this program was on a voluntary basis and added that if the Legislator were on official business of the State, he would get the per diem anyway. Rep. Oldham wondered how you would go about coordinating this. He said this might work for a person living in close proximity to Raleigh, but what about those Legislators living long distances away. Rep. Ramsey commented that the General Assembly already has guides at the front door and doesn't really need this. He added that the Speaker of the House and President Pro Tem of the Senate could already do this, so this legislation is not necessary.

When there was no further discussion, Rep. Buchanan moved to give the committee substitute a favorable report, unfavorable to original bill and to re-refer the committee substitute bill to the Committee on Appropriations. The motion passed.

There being no further business, the meeting adjourned at 10:50 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W Lee

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
May 5, 1999
10:00 a.m.
Room 1228

10:00 Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 636 Consumer Service Quality Assurance **(Owens)**
HB 671 Legislator Guides **(Eddins)**
HB 983 Property Transfers to Nonprofits **(Wainwright)**
HB 984 Advertisement of State Leases Ltd. **(Wainwright)**
HB 1437 Ads for Car Repairs/Funds **(Capps)**

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 636

Short Title: Consumer Service Quality Assurance. (Public)

Sponsors: Representative Owens.

Referred to: Ways and Means.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO SET UP A CUSTOMER SERVICE QUALITY ASSURANCE PROGRAM WITHIN THE STATE AUDITOR'S OFFICE, SO AS TO ENSURE THAT PERSONS RECEIVE QUALITY SERVICES FROM STATE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-64.15. Customer Service Quality Assurance Program.**

There is established within the Office of the State Auditor the Customer Service Quality Assurance Program. The purpose of the program is for the State Auditor to monitor the performance of State agencies from the perspective of the consumer. In such role, the State Auditor's office may act as a consumer of services or permit applicant before State agencies to verify the quality of services. The State Auditor shall report periodically to the Joint Legislative Commission on Governmental Operations on the positive and negative aspects of the review. In the case of deficiencies, the State Auditor shall note whether the deficiencies are the result of inadequate resources or training being provided to State employees providing the services, or from the performance of the employee. The Auditor shall also report on positive service experiences. Employing agencies may place the information received from the State Auditor's Customer Service Quality Assurance reviews in the employee's personnel file."

Section 2. There is appropriated from the General Fund to the Department of State Auditor for fiscal year 1999-2000 the sum of two hundred fifty

four thousand dollars ($254,000) in recurring funds and twenty-six thousand three hundred sixty dollars ($26,360) in nonrecurring funds to implement this act.

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

HOUSE BILL 636:
Consumer Service Quality Assurance

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Owens
Date:	May 5, 1999	**Summary by:**	Jeff Hudson,
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 636 would establish the Customer Service Quality Assurance Program within the State Auditor's office to monitor the performance of State agencies from the perspective of the consumer.***

BILL ANALYSIS: House Bill 636 establishes the Customer Service Quality Assurance Program within the State Auditor's Office. This program authorizes the State Auditor's office to act as a consumer of services or permit applicant before a State agency in order to verify the quality of service. House Bill 636 directs the State Auditor to report to the Joint Legislative Commission on Governmental Operations on the positive and negative aspects of reviews conducted under the program. House Bill 636 also authorizes an employing State agency to place information received pursuant to a review in an employee's personnel file.

House Bill 636 appropriates from the General Fund to the Department of State Auditor for fiscal year 1999-2000, $254,000 in recurring funds and $26,360 in nonrecurring funds to implement the act.

EFFECTIVE DATE: House Bill 636 is effective when it becomes law.

Mary Shuping, Research Division, and Richard Bostic, Fiscal Research Division, contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 636

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H636-ASB-001.01

Date 5-5-99 ,1999

Comm. Sub. [NO]
Amends Title [NO]
FIRST EDITION

Representative Farrell

moves to amend the bill on page 1, line 23,
by inserting "-" after the word "fifty"; and

on page 2, line 3,
by rewriting that line to read:
"Section 3. This act becomes effective July 1, 1999."

SIGNED Mary L. Farrell
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. 1

H. B. No. 636 DATE 5-5-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Eddins
Sen.)

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"such role, the State Auditor's office may respond to consumer complaints or act as a consumer of services or permit"; and

on page 1, line 19

by adding after the word "positive" the words "or negative".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H671-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 671
THIS IS A DRAFT 5-MAY-99 09:08:49
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Legislator Guides. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE LEGISLATIVE SERVICES COMMISSION TO PROVIDE VOLUNTEER LEGISLATORS TO BE AVAILABLE IN THE STATE LEGISLATIVE BUILDING BETWEEN LEGISLATIVE SESSIONS TO TALK TO GROUPS TOURING THE GENERAL ASSEMBLY AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-32 is amended by adding a new subdivision to read:

"(14) When the General Assembly is not in regular or extra session, provide one volunteer member of the General Assembly who will be available on each nonholiday weekday to greet and address groups touring the General Assembly. Legislators performing this task shall be paid the travel and subsistence allowances allowed under G.S. 120-3.1(a)(2) and (3)."

Section 2. There is appropriated from the General Fund to the Legislative Services Commission twenty-four thousand dollars ($24,000) for the 1999-2000 fiscal year for the purpose of implementing the provisions of this act.

Section 3. This act becomes effective July 1, 1999.

5/5/99

HOUSE BILL 671:
Legislator Guides

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Edins
		Summary by:	Tim Hovis
Date:	May 4, 1999		Committee Counsel

SUMMARY: ***House Bill 671 directs the Legislative Services Commission to create a program enrolling volunteer legislators to be available on nonholiday weekdays to greet and address groups touring the General Assembly. The program would only apply when the General Assembly is not in session. Participating legislators would be paid travel and subsistence allowances.***

The bill appropriates $24,000 to the Commission to implement the program.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 636 A BILL TO BE ENTITLED AN ACT TO SET UP A CUSTOMER SERVICE QUALITY ASSURANCE PROGRAM WITHIN THE STATE AUDITOR'S OFFICE, SO AS TO ENSURE THAT PERSONS RECEIVE QUALITY SERVICES FROM STATE AGENCIES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 671 A BILL TO BE ENTITLED AN ACT TO DIRECT THE LEGISLATIVE SERVICES COMMISSION TO CREATE A PROGRAM BY WHICH VOLUNTEER LEGISLATORS WOULD BE AVAILABLE IN THE STATE LEGISLATIVE BUILDING BETWEEN LEGISLATIVE SESSIONS TO TALK TO GROUPS TOURING THE GENERAL ASSEMBLY AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **May 5, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Hillman	OSA
Martha Glass	DOA
Vicky Young	OSA
Ann Case	NCRMP
Stephanie Manrin	NCAR
Ann Sullivan	103 Wildwood Dr. Goldsboro 27534
Bob Graham	391 Gurley Dairy Rd. Pikeville NC 27863
Sandra McCoy	480 Mitchell Rd Dudley NC 28333
Kate McGuire	NC Center for NPs

House Committee
on
Ways and Means

Minutes
May 12, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, May 12, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Wayne Goodwin whose **HB 942 (Protect Child Performers)** was before the Committee.

Staff distributed a proposed committee substitute and Rep. Buchanan moved for its adoption. The motion passed.

Rep. Goodwin explained that this bill simply turned the original bill into a study bill. Rep. Haire moved to give the committee substitute a favorable report, the original bill an unfavorable report and to re-refer the bill to the Rules Committee. The motion passed.

HB 983 (Property Transfers to Nonprofits) and **HB 984 (Advertisement of State Leases Ltd.)** were before the Committee. Because these bills had been incorporated into a committee substitute for HB 985, Rep. Michaux moved to postpone them indefinitely and his motion passed.

HB 1437 (Ads for Car Repairs/Funds) was before the Committee and Rep. Russell Capps was recognized to explain the bill.

He said it would add a new GS 66-280 requiring a business to list all costs, except fees and taxes required by law, in advertising costs of services or repairs to a private passenger vehicles. If a business fails to comply with this requirement, upon written notice to the business, a consumer is required to pay only those charges disclosed in the advertisement, plus any fees and taxes required by law. A violation of the section is defined as an unfair trade practice. The bill would also appropriate $5,000 for 1999-2000 from the General Fund to the Department of Justice, Consumer Protection Section, to publicize these provisions.

Commission discussion followed. Rep. Michaux wondered how you would enforce this proposal. Rep. Jarrell thought there was already protection for consumers in the General Statutes. Rep. Decker pointed out that this only applies to advertising.

Rep. Decker moved to give the bill a favorable report and to re-refer it to the Committee on Appropriations. His motion passed.

Next before the committee were three bills all relating to Energy Savings Contracts. These were: **HB 1164 (Energy Savings Contracts)** (Luebke), **HB 1213 Sunset/Energy Savings Contracts)** (Rogers), and **SB 56 (Sunset/Term of Energy Savings Contract)** (Senator Howard Lee).

Reps. Luebke and Rogers were present. Staff explained a proposed committee substitute for the three bills and used **SB 56** as the vehicle. Rep. Haire proposed a perfecting amendment.

Discussion followed. Rep. Cox was concerned that the bill would stifle competition. After many other members had expressed concerns, Rep. Nesbitt sent the bill to a subcommittee and appointed the following members: Rep. Cox, Chairman, Reps. Wilson, Fox, Pope, Gibson, and Haire.

The meeting adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

5/12/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H942-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 942
THIS IS A DRAFT 12-MAY-99 09:01:41
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Child Performers Study. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE NEED TO PROVIDE PROTECTION FOR YOUTHS IN THE ENTERTAINMENT INDUSTRY.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission shall study the need to protect youths employed in the entertainment industry including the following: (1) the need to create standards for the protection of minors for physically dangerous activity and standards for infants; (2) the adaptation of youth employment in the entertainment industry to the needs of youth for normal education, parenting, and social experiences; and (3) the proper role of State and local agencies, schools, parents, employers, the courts and youth in adapting youth employment in the entertainment industry to the needs of youth. The Commission shall also study the need for court oversight of contracts for high-earning minors in the entertainment industry and professional athletics, and the appointment of a guardian ad litem and guardian of the estate for these minors.

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

April 29, 1999

H 1437. ADS FOR CAR REPAIRS/ FUNDS. *TO REQUIRE TRUTH IN ADVERTISING CERTAIN COSTS OF SERVICING OR REPAIRING PRIVATE PASSENGER VEHICLES AND TO APPROPRIATE FUNDS TO PUBLICIZE THIS REQUIREMENT.* Adds new GS 66-280 requiring a business to list all costs, except fees and taxes required by law, in advertising costs of services or repairs to private passenger vehicles. If a business fails to comply with this requirement, upon written notice to the business, a consumer is required to pay only those charges disclosed in the advertisement, plus any fees and taxes required by law. A violation of the section is defined as an unfair trade practice. Appropriates $5,000 for 1999-2000 from General Fund to Dep't of Justice, Consumer Protection Section, to publicize these provisions. Effective July 1, 1999.

Intro. by Capps.

Ref. to Ways & Means

GS 66, APPROP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 983

Short Title: Property Transfers to Nonprofits. (Public)

Sponsors: Representatives Wainwright and Jeffus.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE WITHOUT TAKING INTO ACCOUNT WHETHER THE ORGANIZATIONS ENGAGE IN SOME FOR-PROFIT ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-29.1(c) reads as rewritten:

"(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. ~~In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for-profit.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 984

Short Title: Advertisement of State Leases Limited. (Public)

Sponsors: Representatives Wainwright and Jeffus.

Referred to: Ways and Means.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-25.1(a) reads as rewritten:

"(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed ~~twelve thousand dollars ($12,000)~~ twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1437

Short Title: Ads for Car Repairs/Funds. (Public)

Sponsors: Representative Capps.

Referred to: Ways and Means, if favorable, Appropriations.

April 29,1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRUTH IN ADVERTISING CERTAIN COSTS OF SERVICING OR REPAIRING PRIVATE PASSENGER VEHICLES AND TO APPROPRIATE FUNDS TO PUBLICIZE THIS REQUIREMENT.

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 35.

"Truthful Advertisements of Costs of Servicing or Repairing Private Passenger Vehicles.

"**§ 66-280. Advertisements of servicing or repairing private passenger vehicles.**

(a) Any business that services or repairs private passenger vehicles and advertises the costs of certain services or repairs of private passenger vehicles shall disclose in the advertisement all costs, except any fees and taxes that are required by law, that a consumer may be charged.

(b) If a business that services or repairs private passenger vehicles fails to comply with the requirements of this section, then, upon written notice to that business, the consumer is required to pay only those charges disclosed in the advertisement, plus any fees and taxes that are required by law.

(c) A violation of this section shall constitute an unfair trade practice under G.S. 75-1.1.

(d) For purposes of this section, 'private passenger vehicle' has the same meaning as in G.S. 20-4.01."

Section 2. There is appropriated from the General Fund to the Department of Justice, Consumer Protection Section, the sum of five thousand dollars ($5,000) for the 1999-2000 fiscal year to publicize the provisions of Article 35 of Chapter 66 of the General Statutes, as enacted in Section 1 of this act.

Section 3. Section 2 of this act becomes effective July 1, 1999. The remainder of this act is effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 56
Finance Committee Substitute Adopted 4/20/99

Short Title: Sunset/Term of Energy Savings Contracts. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight years from the date of~~ two-thirds of the anticipated remaining useful life of the facility after the installation ~~or acceptance by the local governmental unit~~ or commencement of the energy conservation measures provided for under the ~~contract.~~ contract or 25 years, whichever is less.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings

contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings ~~contract.~~ contract, in accordance with manufacturer's standards or other reasonable standards specifically provided in the guaranteed energy savings contract."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

"~~Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999.~~"

Section 5. Sections 1 through 3 of this act become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections of this act are effective when they become law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 56

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

S56-ALD-4 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Representative

moves to amend the bill on page 1, line 4,
by deleting "FACILITIES AND" and substituting "FACILITIES,"; and

on page 1, line 6,
by deleting "CONTRACTS." and substituting "CONTRACTS, AND TO CONSIDER SAVINGS ASSOCIATED WITH OPERATIONS COSTS."; and

on page 2, line 32, by adding "and operations savings" after "savings"; and

on page 3, lines 20 and 21, by inserting between those lines:
"Section 4. G.S. 143-64.17(3) reads as rewritten:
'(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy and operations savings are guaranteed to exceed costs.'
Section 5. G.S. 143-64.17A(b) reads as rewritten:
'(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy and operations savings.'
Section 6. G.S. 143-64.17A(d)(4) reads as rewritten:
'(4) Amount of energy and operations savings;'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 56

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

S56-ALD-4 Page 2 of __

Section 7. G.S. 143-64.17E reads as rewritten:
'**§ 143-64.17E. Payments under contract.**
A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy and operations savings occurring as a result of a guaranteed energy savings contract.'"; and

on page 3, line 21, by renumbering Section 4 as Section 8; and

on page 3, lines 26 through 28, by deleting those lines and substituting:
"Section 9. This act becomes effective June 30, 1999 and applies to contracts entered into 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 56

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

S56-ALD-5

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Second Edition

Representative

moves to amend the bill on page 2, lines 27 through 31, by deleting those lines and substituting:

"(1) The term of the contract does not exceed ~~eight~~ _____ years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

5/12/99

Comparison of HB 1164 (Energy Savings Contracts) with HB 1213/SB 56 (Sunset/Terms of Energy Savings Contracts)

House Committee on Ways and Means
May 12, 1999
Jeff Hudson, Committee Counsel

HB 1164 (Energy Savings Contracts) Representative Luebke	**HB 1213 and SB 56 (Sunset/Term of Energy Savings Contracts)** Representative Rogers and Senator Lee, respectively
Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts	Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts
Extends the maximum allowable term of an energy savings contract from 8 years to 10 years	Extends the maximum allowable term of an energy savings contract from 8 years to 2/3 the anticipated remaining useful life of a facility or 25 years, whichever is less
Adds the concept of "operations" savings to the authority of local governments to enter into guaranteed energy savings contracts as follows: • Redefines "guaranteed energy savings contact" to mean a contract in which energy **and operations** savings are guaranteed to exceed costs • Provides that a proposal from a qualified provider must include estimates of energy **and operations** savings • Provides that a local governmental unit may only enter into a guaranteed energy savings contract if energy **and operations** savings will equal or exceed the total cost of the contract • Provides that State appropriations to a local governmental unit will not be reduced as a result of energy **and operations** savings resulting from a guaranteed energy savings contract	Redefines "energy conservation measure" as follows: • Energy conservation measure includes **services** related to the operation of a facility • Energy conservation measures result in anticipated energy savings • Broadens the limitation on "other energy conservation measures" by removing the requirement that such measures provide long-term operating cost reductions or significantly reduce energy consumed Provides that if a local governmental unit does not contract with the qualified provider to maintain the energy conservation measures, the local governmental unit must provide for maintenance of the measures in accordance with manufacturer's standards or other reasonable standards provided for in the guaranteed energy savings contract Makes technical, clarifying, and conforming changes
This act becomes effective June 30, 1999.	Sections 1 through 3 become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections are effective when they become law. *(A technical correction was made to the effective date of SB 56 that is not found in HB 1213)*

Comparison of HB 1164 (Energy Savings Contracts) with HB 1213/SB 56 (Sunset/Terms of Energy Savings Contracts)
House Committee on Ways and Means
May 12, 1999
Jeff Hudson, Committee Counsel

HB 1164 (Energy Savings Contracts) Representative Luebke	**HB 1213 and SB 56 (Sunset/Term of Energy Savings Contracts)** Representative Rogers and Senator Lee, respectively
Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts	Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts
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Adds the concept of "operations" savings to the authority of local governments to enter into guaranteed energy savings contracts as follows: • Redefines "guaranteed energy savings contact" to mean a contract in which energy **and operations** savings are guaranteed to exceed costs • Provides that a proposal from a qualified provider must include estimates of energy **and operations** savings • Provides that a local governmental unit may only enter into a guaranteed energy savings contract if energy **and operations** savings will equal or exceed the total cost of the contract • Provides that State appropriations to a local governmental unit will not be reduced as a result of energy **and operations** savings resulting from a guaranteed energy savings contract	Redefines "energy conservation measure" as follows: • Energy conservation measure includes **services** related to the operation of a facility • Energy conservation measures result in anticipated energy savings • Broadens the limitation on "other energy conservation measures" by removing the requirement that such measures provide long-term operating cost reductions or significantly reduce energy consumed Provides that if a local governmental unit does not contract with the qualified provider to maintain the energy conservation measures, the local governmental unit must provide for maintenance of the measures in accordance with manufacturer's standards or other reasonable standards provided for in the guaranteed energy savings contract Makes technical, clarifying, and conforming changes
This act becomes effective June 30, 1999.	Sections 1 through 3 become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections are effective when they become law. *(A technical correction was made to the effective date of SB 56 that is not found in HB 1213)*

NCAPHCC

NORTH CAROLINA ASSOCIATION OF PLUMBING,
HEATING, COOLING CONTRACTORS, INC.
70 EAST BUSINESS PARK, 145 HIGHWAY 70 WEST
GARNER, NORTH CAROLINA 27529
(919) 661-8222 FAX (919) 661-8003

FAX

DATE: May, 4, 1999 **PAGES:**1

TO: N.C. House - Ways & Means Committee Members

FROM: LEGISLATIVE TASK FORCE

RE: SB 56, HB 1164, HB 1213 - Modifications to Energy Savings Legislation

COMMENTS:

*U*R*G*E*N*T*

The major Mechanical/Electrical trades associations in North Carolina including:

* North Carolina Association of Plumbing, Heating,Cooling Contractors

*Carolinas Electrical Contractors Association

*North Carolina Heating,Air Conditioning Contractors Association

*North Carolina Association of Electrical Contractors

Representing some 38,500 licensed are opposed to the passing of any legislation modifying current "Guaranteed Energy Savings" contract statutes. A modification simply eliminating the sunset would be considered acceptable.

Our National Organizations affiliations have advised that problems will occur should modification to legislation as proposed may causing problems for Public Owners and making more burdensome the passing of fair Utility Deregulation legislation in the near future.

The North Carolina Legislature currently has a Utility Deregulation study under way.

We urge you to delay any decisions relating to changes till after the Study Commission reports.

Your support with regard to our position is a vote for the protection of the citizens of North carolina.

Vote no to SB 56, HB 1164 & HB 1213!!

5/12/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 56

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

S56-ALD-4

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Representative

moves to amend the bill on page 1, line 4,
by deleting "FACILITIES AND" and substituting "FACILITIES,"; and

on page 1, line 6,
by deleting "CONTRACTS." and substituting "CONTRACTS, AND TO CONSIDER SAVINGS ASSOCIATED WITH OPERATIONS COSTS."; and

on page 2, line 32, by adding "or operations savings" after "savings"; and

on page 3, lines 20 and 21, by inserting between those lines:

"Section 4. G.S. 143-64.17(3) reads as rewritten:

'(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy and operations savings are guaranteed to exceed costs.'

Section 5. G.S. 143-64.17A(b) reads as rewritten:

'(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy and operations savings.'

Section 6. G.S. 143-64.17A(d)(4) reads as rewritten:

'(4) Amount of energy and operations savings;'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 56

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

S56-ALD-4 Page 2 of __

Section 7. G.S. 143-64.17E reads as rewritten:
"**§ 143-64.17E. Payments under contract.**
A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy and operations savings occurring as a result of a guaranteed energy savings contract.'"; and

on page 3, line 21, by renumbering Section 4 as Section 8; and

on page 3, lines 26 through 28, by deleting those lines and substituting:
"Section 9. This act becomes effective June 30, 1999 and applies to contracts entered into on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **May 12, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Kira Martin	Upper Neuse River Basin Assn.
Don Dixon	Carolina Power + Light Co.
Gregg Eaton	SRS
[illegible]	CP&C
Kathryn Sawyer	Commerce
Alicia Gregory	Progress Energy
[illegible]	AP
Kim Hibbard	NCLM
Sharon Strunk	State Comptroller's Office
Karen Causseaux	SCO
Elizabeth Capston	[illegible]
[illegible]	[illegible]
Donald Clark	Johnson Controls
Don Tiester	Poyner & Spruill
Henry Jones	Attorney Raleigh
Eddie Tedesco	NCSPHCC
Sharon Strunk	Energy Div
David Ferrell	NC Service Station Assn / Indep. Garage Owners of NC
Rob Wohlberg	Interns
Don Henton	NCCCS
[illegible]	[illegible]
B. E. Booth	DOT
Ron Adcock	NCACC
[illegible]	NC State Treasurer
Jim Hobbs	NCHMA
S Markham	Eqtls
Bernard Allen	505

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **May 12, 1999**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
S. Lynne Hamlet	Sean. Lee
David Knight	NCAPA
David Simmons	ZOA, PA
James Andrews	NC State AFL-CIO
[illegible]	NC State [illegible]
A. C. Dawson	" " " "
Vance Price	CLT Chamber

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 942 A BILL TO BE ENTITLED AN ACT TO PROVIDE PROTECTION FOR YOUTHS IN THE ENTERTAINMENT INDUSTRY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 983 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FIAR-MARKET VALUE WITHOUT TAKING INTO ACCOUNT WHETHER THE ORGANIZATIONS ENGAGE IN SOME FOR-PROFIT ACTIVITIES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☒ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 984 A BILL TO BE ENTITLED AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☒ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1437 A BILL TO BE ENTITLED AN ACT TO REQUIRE TRUTH IN ADVERTISING CERTAIN COSTS OF SERVICING OR REPAIRING PRIVATE PASSENGER VEHICLES AND TO APPROPRIATE FUNDS TO PUBLICIZE THIS REQUIREMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

House Committee
on
Ways and Means

Minutes
May 19, 1999

The House Committee on Ways and Means met on May 19, 1999 at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Monroe Buchanan to explain **HB 1060 (Legislators' Longevity Pay).**

Rep. Buchanan explained that the bill would establish longevity payments for members of the General Assembly to be added to the members' salaries at intervals of five, ten, fifteen, and twenty years of service.

Current law provides for longevity pay for state officers and employees at various amounts and intervals depending on an individuals office or place of employment. However, members of the General Assembly receive no longevity pay.

House Bill 1060 establishes longevity payments for members of the General Assembly at the following amounts and intervals:

(1) 4.8% of annual salary after 5 years of service;
(2) 9.6% of annual salary after 10 years of service;
(3) 14.4% of annual salary after 15 years of service; and
(4) 19.2 % of annual salary after 20 years of service.

This schedule is the same longevity payment schedule currently used for most elected or appointed positions in the Judicial Department, and officers and employees of the General Assembly. The bill would become effective upon the convening of the 2001 General Assembly.

Upon completion of his remarks, Stanley Moore, Legislative Fiscal Analysis, distributed a Summary of Legislative Salaries, Expenses, Subsistence and Mileage for Terms beginning in 1971-72 through 1999-2000. **(See attached Summary)**

Rep. Connie Wilson asked if any consideration was given to having a commission to study this issue. Rep. Bowie said she supported the bill.

Rep. Cox said he would like to include the legislative temporary staff in the bill and Rep. Michaux proposed two amendments to the bill to add temporary employees and his motion passed.

Rep. Nesbitt recognized Elaine Robinson, Director of the Legislative Administrative Division and asked her if longevity pay could be enacted with legislation. It was established that this could be done by the Legislative Services Commission.

Committee discussion followed. Rep. Eddins wondered how this would look to other temporary employee in state government. Rep. Wilson said she would feel more comfortable to commission looked at this issue.

Rep. Cunningham moved to have the bill as amended incorporated into a committee substitute bill, give a favorable report to Committee Substitute bill, unfavorable to original bill and re-refer the bill to the Committee on Appropriations.

Vote was taken and division called. Nine members voted in the affirmative, seven in the negative. Rep. Cunningham's motion passed.

The meeting adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
May 19, 1999
10:00 a.m.
Room 1228

10:00 a.m. Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 1060 Legislators' Longevity Pay (**Buchanan**)
HB 1143 Legislators' Per Diem/Expenses (**Buchanan**)
HB 1164 Energy Savings Contracts (**Luebke**)
HB 1213 Sunset/Energy Savings Contract (**Rogers**)

SB 56 Sunset/Term of Energy Savings Contract (**Lee**)

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1060

Short Title: Legislators' Longevity Pay. (Public)

Sponsors: Representatives Buchanan; Alexander, Arnold, Barbee, Barefoot, Berry, Bonner, Boyd-McIntyre, Brown, Brubaker, Carpenter, Church, Crawford, Culp, Culpepper, Cunningham, Davis, Dockham, Earle, Easterling, Edwards, Ellis, Fitch, Hardaway, Hill, Howard, Hunter, Hurley, Justus, Kiser, McAllister, McCombs, McCrary, McMahan, Michaux, Mitchell, Mosley, Oldham, Owens, Rogers, Saunders, Sexton, Starnes, Sutton, Tallent, Tolson, Wainwright, G. Wilson, Womble, Wright, and Yongue.

Referred to: Ways and Means, if favorable, Appropriations.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING LONGEVITY PAYMENTS FOR MEMBERS OF THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-3 is amended by adding a new subsection to read:

"(d) Every member of the General Assembly shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in this section payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a member of the General Assembly."

Section 2. This act becomes effective upon the convening of the 2001 General Assembly.

5/19/99

Summary of Legislative Salaries, Expenses, Subsistence and Mileage

Term	Annual Salary	Annual Expense	Daily Subsistence	Mileage Rate
1971-72	$2,400	$600	$25	$ .10
1973-74	$2,400	$600	$25	$ .11
1975-76	$4,800	$1,200	$35	$ .15
1977-78	$4,800	$1,200	$35	$ .15
1979-80	$6,000	$1,800	$44	$ .17
1981-82	$6,936	$2,064	$50	$ .25
1983-84	$6,936	$2,064	$50	$ .25
1985-86	$8,400	$2,508	$60	$ .25
1987-88	$10,140	$3,024	$79	$ .25
1989-90	$11,124	$5,580	$81	$ .25
1991-92	$12,504	$6,264	$81	$ .25
1993-94	$13,026	$6,264	$92	$ .25
1995-96	$13,951	$6,708	$104	$ .29
1997-98	$13,951	$6,708	$104	$ .29
1999-2000	$13,951	$6,708	$104	$ .29

NU	POSITION	ANNUAL SALARY	ANNUAL EXPENCE	ANNUAL TOTAL
1	SPEAKER OF THE HOUSE	$ 38,151	$ 16,956	$ 55,107
1	PRESIDENT PRO TEMPORE OF THE SENATE	$ 35,151	$ 16,956	$ 52,107
1	SPEAKER PRO TEMPORE OF THE HOUSE	$ 21,739	$ 10,032	$ 31,771
1	DEPUTY PRESIDENT PRO TEMPORE-SENATE	$ 21,739	$ 10,032	$ 31,771
4	MAJORITY & MINORITY LEADERS	$ 17,048	$ 7,992	$ 25,040
162	OTHER MEMBERS OF GENERAL ASSEMBLY	$ 13,951	$ 6,708	$ 20,659

5/19/99

HOUSE BILL 1060:
Legislators' Longevity Pay

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Rep. Buchanan
		Summary by:	Tim Hovis Committee Counsel
Date:	May 18, 1999		
Version:	First Edition		

SUMMARY: ***House Bill 1060 establishes longevity payments for members of the General Assembly to be added to the members' salary at intervals of five, ten, fifteen, and twenty years of service.***

BILL ANALYSIS: Current law provides for longevity pays for state officers and employees at various amounts and intervals depending on an individuals office or place of employment. However, members of the General Assembly receive no longevity pay.

House Bill 1060 establishes longevity payments for members of the General Assembly at the following amounts and intervals: (1) 4.8% of annual salary after 5 years of service; (2) 9.6% of annual salary after 10 years of service; (3) 14.4% of annual salary after 15 years of service; and (4) 19.2% of annual salary after 20 years of service. This schedule is the same longevity payment schedule currently used for most elected or appointed positions in the Judicial Department, and officers and employees of the General Assembly.

House Bill 1060 would become effective upon the convening of the 2001 General Assembly.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 1060 DATE 5-19-99

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
)
Sen.)

moves to amend the bill on page 1, lines 11-12

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following:

" Section 2. The Legislative Services Commission shall provide longevity payments for temporary General Assembly staff in the same manner as provided for permanent staff of the General Assembly. ";

~~and by renumbering the remaining section accordingly~~

and on page 1, lines 12-13, by rewriting the lines to read:

" Section 3. Section 1 of this act becomes effective upon the convening of the 2001 General Assembly. Section 2 of this act becomes effective January 1, 2000. Section 3 of this act is effective upon becoming law. "

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. 1st

H. B. No. 1060 DATE 5-19-99

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
)
Sen.)

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"GENERAL ASSEMBLY AND TEMPORARY STAFF OF THE GENERAL ASSEMBLY"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 1060 A BILL TO BE ENTITLED AN ACT ESTABLISHING LONGEVITY PAYMENTS FOR MEMBERS OF THE GENERAL ASSEMBLY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **May 19, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Carstens	SCO
Patrice Roesler	NC Assn County Commrs
Jim Blackburn	" " " "
[illegible]	NC Equity
Catherine J Davis	Electricities
[illegible]	Poyner & Spruill
Tammy Johnson	Ferguson Alley
David Simmons	"
John Rainey	UST
[illegible]	Poyner & Spruill
[illegible]	VFA
[illegible]	Observer Times

House Committee
on
Ways and Means

Minutes
May 26, 1999

The House Ways and Means Committee met on Wednesday, May 26, 1999 at 10:00 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and made opening remarks.

HB 1143 ((Legislator's Per Diem/Expenses) was before the Committee for consideration and Rep. Monroe Buchanan was recognized to explain the bill. He said the bill makes the following changes to the pay and reimbursement rates for members and officers of the General Assembly:

1. Increases the expense allowance for the majority and minority leaders of the House and Senate from $666.00 per month to $697.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.
2. Increases the expense allowance for members of the general Assembly from $559.00 per month to $590.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.
3. Conforms the mileage reimbursement rate for General Assembly members to the current business mileage reimbursement rate set by the Internal Revenue Service. This increases the rate from .29 cents per mile to .31 cents per mile.
4. Conforms the subsistence allowance for in-state travel for members of the General Assembly to the current subsistence allowance for meals and lodging set by the federal government for federal employees traveling to Raleigh. This increases the subsistence allowance for in-state travel for $104.00 to $112.00 per day.
5. Increases the subsistence allowance for out-of-state meals from $26.00 to $38.00 for General Assembly members and conforms the reimbursement rate for out-of-state lodge to the current rate set by the federal government for federal employees. This rate changes depending on the location within the country. The subsistence allowance for out-of-site meals was last increased in 1992 and was effective upon the convening of the 1993 General Assembly.

The bill would become effective upon the convening of the 2001 General Assembly.

Discussion followed. Stanley Moore, Fiscal Analysis, was recognized to respond to members' questions. While most members agreed that there needed to be an increase in salaries and subsistence, most were reluctant to say they supported the bill.

Rep. Jonie Bowie suggested that it would be prudent to set up a Commission to study the issue of Legislative pay and most committee members agreed.

Rep. Cox brought up the issue of longevity pay for temporary employees of the Legislature. Rep. Nesbitt asked committee members if they would support a request to the Speaker to add longevity pay those employees and the committee concurred.

Rep. Buchanan moved to give **HB 1143** a favorable report and to re-refer the bill to the Committee on Appropriations. The motion passed.

House Bills 1164 (Energy Savings Contracts) , 1213 (Sunset/Terms of Energy Savings Contracts), and **Senate Bill 56 (Sunset/Terms of Energy Savings Contracts)** were next on the agenda.

Rep. Cox was recognized and presented a subcommittee report as a **Committee Substitute for Senate Bill 56** which incorporated sections of all three bills into one. **(See Attached Comparison)** He moved for adoption and his motion passed. He said the proposed committee substitute would remove the July 1, 199 sunset from the authority of local governments to enter into guaranteed energy savings contracts. It would also extend the maximum allowable term of an energy savings contract from 8 years to 12 years. The bill also redefines "energy conservation measure" as follows:

- Energy conservation measure includes services related to the operation of a facility,
- Energy conservation measures result in anticipated energy savings,
- Broadens the limitation on "other energy conservation measures" by removing the requirement that such measures provide long-term operating cost reductions or significantly reduce energy consumed.

The bill also makes technical, clarifying, and conforming changes.

Committee discussion followed. Rep. Decker made a motion to amend the bill on page 1, line 15 by deleting the word "anticipated" and substituting the word "future." His motion failed.

Rep. Buchanan moved to give the committee substitute a favorable report, unfavorable as to original bill and to re-refer the bill to the Committee on Finance. His motion passed.

HB 1164 (Energy Savings Contracts) was before the committee for consideration. Rep. Paul Luebke, bill sponsor, was recognized to explain the bill. He distributed a proposed committee substitute to the members and Rep. Owens moved that it be adopted. The motion passed. Rep. Owens then moved to give the committee substitute a favorable report, unfavorable to original bill, and to re-refer the bill to the Committee on Rules. The motion passed.

HB 1213 (Sunset/Term of Energy Savings Contracts) was before the Committee. Rep. Cox made a motion to postpone the bill indefinitely and his motion passed.

HB 964 (Municipal Incorporation Process) was before the Committee for consideration. Rep. Mary Jarrell, bill sponsor, was recognized and she distributed a proposed committee substitute and moved that it be adopted. The motion passed.

She explained that **HB 964** makes various changes to the law concerning municipal incorporations. Section I requires the petition for incorporation before the Joint Legislative Commission on Municipal Incorporations to contact the following:

1. A statement that the proposed municipality will have a budget ordinance with estimated tax revenues of not less than 1/3 of total revenues (excluding public enterprises, gifts, grants, and loans) within the first full fiscal year following incorporation;
2. A statement that the municipality will offer four of the following services within the third fiscal year of incorporation---police protection, fire protection, solid waste collection, water distribution, street maintenance, street construction, street lighting, and zoning. Current law requires the proposed municipality to submit a plan that proposes at least two of the services.

Section 2 of the bill requires the proposed municipality to have a population density of at least 250 persons per square mile. This is in addition to the existing requirement of a permanent population of at least 100 persons.

Section 3 deletes the exception from the requirement that at least 40% of the area be developed for urban uses and dedicated as open space. This exception currently applies to proposed municipalities within two miles of the Atlantic Ocean, Albemarle Sound or Pamlico Sound.

Section 4 deletes a requirement that, for the Commission to make a positive recommendation on the proposed incorporation, the entire area meet the development criteria in the involuntary annexation statutes.

This section also requires the Commission to indicate the impact on other municipalities and counties of the diversion of already levied local taxes and State-shared revenues to support services in the proposed municipality.

Sections 5 through 11 provide that no municipality incorporated on or after January 1, 2000 shall be eligible to receive a variety of State funds if its adopted budget ordinance fails to meet the requirements as provided in Section 1 above.

Rep. Edgar Starnes asked why was there an effort to revise the incorporation process so soon after a study commission had established that a municipality would only have to provide two of the listed services. Gerry Cohen, Director, Legislative Bill Drafting Division, was recognized.

Considerable discussion followed. Rep. Decker requested information on municipal incorporations from 1995-1999.

The Chairman announced that HB 964 would be carried over until the Committee's next meeting.

The meeting adjourned at 11:00 a.m.

Rep. Martin Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
May 26, 1999
10:00 a.m.
Room 1228

10:00 a.m. Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 964 Municipal Incorporation Process **(Jarrell)**
HB 1114 Enhancing Emergency Medical Services **(Wright)**
HB 1120 Authorize Public Hospital Debt **(Wright)**
HB 1143 Legislators' Per Diem/Expenses **(Buchanan)**
HB 1164 Energy Savings Contracts **(Luebke)**
HB 1213 Sunset/Energy Savings Contract **(Rogers)**

SB 56 Sunset/Term of Energy Savings Contract **(Lee)**

ADJOURNMENT

5/26/99

HOUSE BILL 1143:
Legislator's Per Diem/Expenses

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Rep. Buchanan
		Summary by:	Tim Hovis Committee Counsel
Date:	May 18, 1999		
Version:	First Edition		

SUMMARY: House Bill 1143 makes the following changes to the pay and reimbursement rates for members and officers of the General Assembly:

(1) Increases the expense allowance for the majority and minority leaders of the House and Senate from $666.00 per month to $697.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.

(2) Increases the expense allowance for members of the General Assembly from $559.00 per month to $590.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.

(3) Conforms the mileage reimbursement rate for General Assembly members to the current business mileage reimbursement rate set by the Internal Revenue Service. This increases the rate from .29 cents per mile to .31 cents per mile.

(4) Conforms the subsistence allowance for in-state travel for members of the General Assembly to the current subsistence allowance for meals and lodging set by the federal government for federal employees traveling to Raleigh. This increases the subsistence allowance for in-state travel from $104.00 to $112.00 per day.

(5) Increases the subsistence allowance for out-of state meals from $26.00 to $38.00 for General Assembly members and conforms the reimbursement rate for out-of-state lodging to the current rate set by the federal government for federal employees. This rate changes depending on the location within the country. The subsistence allowance for out-of-state meals was last increased in 1992 and was effective upon the convening of the 1993 General Assembly.

House Bill 1143 would become effective upon the convening of the 2001 General Assembly.

5/26/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 964
Proposed Committee Substitute H964-PCS3421-LB

Short Title: Municipal Incorporation Process. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MUNICIPAL INCORPORATION PROCESS SO AS TO PROVIDE MORE SCRUTINY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-163(c) reads as rewritten:

"(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance estimating revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the General Statutes of not less than one third (1/3) of its total estimated revenues (excluding revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts, grants, and loans) no later than the first full fiscal year following the effective date of the incorporation. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or

another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas."

Section 2. G.S. 120-167 reads as rewritten:

"**§ 120-167. Additional criteria; population.**

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least ~~100.~~ 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile."

Section 3. G.S. 120-168 reads as rewritten:

"**§ 120-168. Additional criteria; development.**

~~Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the~~ The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants."

Section 4. G.S. 120-169.1 reads as rewritten:

"**§ 120-169.1. Additional criteria; level of development, ~~services.~~ services; financial impact on other local governments.**

~~(a) Level of Development. -- The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).~~

(b) Services. -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c). ~~To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:~~

~~(1) Police protection.~~
~~(2) Fire protection.~~
~~(3) Garbage and refuse collection or disposal.~~
~~(4) Water distribution.~~
~~(5) Sewer collection or disposal.~~
~~(6) Street maintenance, construction, or right-of-way acquisition.~~
~~(7) Street lighting.~~
~~(8) Adoption of citywide planning and zoning.~~

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

Section 5. G.S. 136-41.2 reads as rewritten:

"**§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.**

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal

requirement that the most recent required election shall have been held may be waived only:

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality incorporated with an effective date prior to January 1, 2000, shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars ($100.00) valuation upon all taxable property within its corporate limits, and no municipality incorporated with an effective date on or after January 1, 2000, shall be eligible to receive funds under G.S. 136-41.1 if its adopted budget ordinance estimates revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the General Statutes of less than one third (1/3) of its total estimated revenues (excluding revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts, grants, and loans), and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal ~~services.~~ services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street ~~lighting.~~ lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945."

Section 6. G.S. 105-472 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 7. G.S. 105-486 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 8. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 9. G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.
(2) The Property Tax Commission.
(3) The Institute of Government in operating a training program in property tax appraisal and assessment.
(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Section 10. G.S. 105-113.82 is amended by adding a new subsection to read:

"(h) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:

"(e) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 12. Section 1 of this act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Corporations makes recommendations on or after the date this act becomes law. The remainder of this act is effective when it becomes law.

5/26/99

HOUSE BILL 964:
Municipal Incorporation Process

BILL ANALYSIS

Committee:	House Ways and Means Commitee	**Introduced by:**	Rep. Jarrell
		Summary by:	Tim Hovis Committee Counsel
Date:	May 25, 1999		
Version:	Proposed Committee Substitute		

SUMMARY: House Bill 964 makes various changes to the law concerning municipal incorporations.

Section 1 of the bill requires the petition for incorporation before the Joint Legislative Commission on Municipal Incorporations to contain the following:

> *(1) A statement that the proposed municipality will have a budget ordinance with estimated tax revenues of not less than 1/3 of total revenues (excluding public enterprises, gifts, grants, and loans) within the first full fiscal year following incorporation;*
>
> *(2) A statement that the municipality will offer four of the following services within the third fiscal year of incorporation—police protection, fire protection, solid waste collection, water distribution, street maintenance, street construction, street lighting, and zoning. Current law requires the proposed municipality to submit a plan that proposes at least two of the services.*

Section 2 of the bill requires the proposed municipality to have a population density of at least 250 persons per square mile. This is in addition to the existing requirement of a permanent population of at least 100 persons.

Section 3 deletes the exception from the requirement that at least 40% of the area be developed for urban uses or dedicated as open space. This exception currently applies to proposed municipalities within two miles of the Atlantic Ocean, Albemarle Sound or Pamlico Sound.

Section 4 deletes a requirement that, for the Commission to make a positive recommendation on the proposed incorporation, the entire area meet the development criteria in the involuntary annexation statutes.

This section also requires the Commission to indicate the impact on other municipalities and counties of the diversion of already levied local taxes and State-shared revenues to support services in the proposed municipality.

Sections 5 through 11 provide that no municipality incorporated on or after January 1, 2000 shall be eligible to receive a variety of State funds if its adopted budget ordinance fails to meet the requirements as provided in Section 1 above.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1143

Short Title: Legislators' Per Diem/Expenses. (Public)

Sponsors: Representative Buchanan.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MONTHLY EXPENSE ALLOWANCE, PER DIEM RATE, AND MILEAGE REIMBURSEMENT OF MEMBERS OF THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-3 reads as rewritten:

"**§ 120-3. Pay of members and officers of the General Assembly.**

(a) The Speaker of the House shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars ($1,413) per month. The President Pro Tempore of the Senate shall be paid an annual salary of thirty-eight thousand one hundred fifty-one dollars ($38,151) payable monthly, and an expense allowance of one thousand four hundred thirteen dollars (1,413) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars (836.00) per month. The Deputy President Pro Tempore of the Senate shall be paid an annual salary of twenty-one thousand seven hundred thirty-nine dollars ($21,739) payable monthly, and an expense allowance of eight hundred thirty-six dollars ($836.00) per month. The majority and minority leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of seventeen thousand forty-eight dollars ($17,048) payable monthly, and an expense allowance of ~~six hundred sixty-six dollars ($666.00) per month.~~ six hundred ninety-seven dollars ($697.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars ($13,951) payable monthly, and an expense allowance of ~~five hundred fifty-nine dollars ($559.00)~~ five hundred ninety dollars ($590.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission."

Section 2. G.S. 120-3.1(a) reads as rewritten:

"(a) In addition to compensation for their services, members of the General Assembly shall be paid the following allowances:

(1) A weekly travel allowance for each week or fraction thereof that the General Assembly is in regular or extra session. The amount of the weekly travel allowance shall be calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in ~~Rev. Proc. 93-51, December 27, 1993.~~ Rev. Proc. 98-63, December 28, 1998.

(2) A travel allowance at the rate which is the business standard mileage rate set by the Internal Revenue Service in ~~Rev. Proc. 93-51, December 27, 1993,~~ Rev. Proc. 98-63, December 28, 1998, whenever the member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission.

(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at ~~58 Federal Register 67959 (December 22, 1993),~~ 64 Federal Register 6550-6565 (February 10, 1999), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

a. Traveling as a representative of the General Assembly or of its committees or commissions, or

b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of ~~twenty-six dollars ($26.00)~~ thirty-eight dollars ($38.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at ~~58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).~~ 64 Federal Register 6550-6565 (February 10, 1999).

(4) A member may be reimbursed for registration fees as permitted by the Legislative Services Commission."

Section 3. This act becomes effective upon the convening of the 2001 General Assembly.

HOUSE BILL 1143:
Legislator's Per Diem/Expenses

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Rep. Buchanan
		Summary by:	Tim Hovis Committee Counsel
Date:	May 18, 1999		
Version:	First Edition		

SUMMARY: House Bill 1143 makes the following changes to the pay and reimbursement rates for members and officers of the General Assembly:

(1) Increases the expense allowance for the majority and minority leaders of the House and Senate from $666.00 per month to $697.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.

(2) Increases the expense allowance for members of the General Assembly from $559.00 per month to $590.00 per month. This amount was last increased in 1994 and was effective upon the convening of the 1995 General Assembly.

(3) Conforms the mileage reimbursement rate for General Assembly members to the current business mileage reimbursement rate set by the Internal Revenue Service. This increases the rate from .29 cents per mile to .31 cents per mile.

(4) Conforms the subsistence allowance for in-state travel for members of the General Assembly to the current subsistence allowance for meals and lodging set by the federal government for federal employees traveling to Raleigh. This increases the subsistence allowance for in-state travel from $104.00 to $112.00 per day.

(5) Increases the subsistence allowance for out-of state meals from $26.00 to $38.00 for General Assembly members and conforms the reimbursement rate for out-of-state lodging to the current rate set by the federal government for federal employees. This rate changes depending on the location within the country. The subsistence allowance for out-of-state meals was last increased in 1992 and was effective upon the convening of the 1993 General Assembly.

House Bill 1143 would become effective upon the convening of the 2001 General Assembly.

5/26/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 56
Finance Committee Substitute Adopted 4/20/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S56-CSSB-006
14:17:56 EZT / 25-MAY-99

ATTENTION: Line numbers may change after adoption.

Short Title: Energy Savings Contract Term/Sunset (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO INCLUDE SERVICES IN THE DEFINITION OF ENERGY CONSERVATION MEASURES, TO EXTEND THE MAXIMUM DURATION OF A GUARANTEED ENERGY SAVINGS CONTRACT, AND TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF A LOCAL GOVERNMENTAL UNIT TO ENTER INTO A GUARANTEED ENERGY SAVINGS CONTRACT FOR A LOCAL PUBLIC FACILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B(a) reads as rewritten:

"(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight~~ 12 years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

"~~Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999.~~"

Section 5. This act becomes effective July 1, 1999 and applies to contracts entered into on or after July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. S56-CSSB-006

H. B. No. _____ DATE 5-26-99

S. B. No. 56 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Deckev

moves to amend the bill on page 1, line 15

( ) WHICH CHANGES THE TITLE

by deleting the word "anticipated"

and substituting the "future".

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

5/26/99

Comparison of HB 1164 (Energy Savings Contracts) and HB 1213/SB 56 (Sunset/Terms of Energy Savings Contracts) with the Proposed Committee Substitute for SB 56 (Sunset/Terms of Energy Savings Contracts)

House Committee on Ways and Means
May 26, 1999
Jeff Hudson, Committee Counsel

HB 1164 (Energy Savings Contracts) Representative Luebke	**HB 1213 and SB 56 (Sunset/Term of Energy Savings Contracts)** Representative Rogers and Senator Lee, respectively	**Proposed Committee Substitute for SB 56 (Sunset/Term of Energy Savings Contract)** Senator Lee **S56-CSSB-006**
Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts	Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts	Removes the July 1, 1999 sunset from the authority of local governments to enter into guaranteed energy savings contracts
Extends the maximum allowable term of an energy savings contract from 8 years to 10 years	Extends the maximum allowable term of an energy savings contract from 8 years to 2/3 the anticipated remaining useful life of a facility or 25 years, whichever is less	Extends the maximum allowable term of an energy savings contract from 8 years to 12 years
• Redefines "guaranteed energy savings contact" to mean a contract in which energy **and operations** savings are guaranteed to exceed costs • Provides that a proposal from a qualified provider must include estimates of energy **and operations** savings • Provides that a local governmental unit may only enter into a guaranteed energy savings contract if energy **and operations** savings will equal or exceed the total cost of the contract • Provides that State appropriations to a local governmental unit will not be reduced as a result of energy **and operations** savings resulting from a guaranteed energy savings contract	*No Comparable Provision*	*No Comparable Provision*

HB 116[illegible] Energy Savings Contracts) Representative Luebke	HB 1213 and SB 56 (S[illegible]et/Term of Energy Savings Contracts) Representative Rogers and Senator Lee, respectively	Proposed Committee Substitute for SB 56 (Sunset/Term of Energy Savings Contract) Senator Lee S56-CSSB-006
No Comparable Provision	Redefines "energy conservation measure" as follows: • Energy conservation measure includes **services** related to the operation of a facility • Energy conservation measures result in anticipated energy savings • Broadens the limitation on "other energy conservation measures" by removing the requirement that such measures provide long-term operating cost reductions or significantly reduce energy consumed Provides that if a local governmental unit does not contract with the qualified provider to maintain the energy conservation measures, the local governmental unit must provide for maintenance of the measures in accordance with manufacturer's standards or other reasonable standards provided for in the guaranteed energy savings contract Makes technical, clarifying, and conforming changes	Redefines "energy conservation measure" as follows: • Energy conservation measure includes **services** related to the operation of a facility • Energy conservation measures result in anticipated energy savings • Broadens the limitation on "other energy conservation measures" by removing the requirement that such measures provide long-term operating cost reductions or significantly reduce energy consumed *No Comparable Provision* Makes technical, clarifying, and conforming changes
This act becomes effective June 30, 1999.	Sections 1 through 3 become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections are effective when they become law.	This act becomes effective July 1, 1999 and applies to contracts entered into on or after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1164

Short Title: Energy Savings Contracts. (Public)

Sponsors: Representative Luebke.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL GOVERNMENTAL UNITS TO TAKE SAVINGS ASSOCIATED WITH OPERATIONS COSTS INTO ACCOUNT, TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS, AND TO REPEAL THE SUNSET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(3) reads as rewritten:

"(3) 'Guaranteed energy savings contract' means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy and operations savings are guaranteed to exceed costs."

Section 2. G.S. 143-64.17A(b) reads as rewritten:

"(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy and operations savings."

Section 3. G.S. 143-64.17A(d)(4) reads as rewritten:

"(4) Amount of energy and operations savings;"

Section 4. G.S. 143-64.17B(a) reads as rewritten:

"(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight~~ 10 years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.

(2) The local governmental unit finds that the energy and operations savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building."

Section 5. G.S. 143-64.17E reads as rewritten:

"**§ 143-64.17E. Payments under contract.**

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy and operations savings occurring as a result of a guaranteed energy savings contract."

Section 6. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, is repealed.

Section 7. This act becomes effective June 30, 1999.

5/26/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1164
PROPOSED COMMITTEE SUBSTITUTE H1164-CSSB-002
09:34:29 EZT / 12-MAY-99

ATTENTION: Line numbers may change after adoption.

Short Title: Energy Savings Contracts Study. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY ISSUES RELATING TO THE AUTHORITY OF STATE AGENCIES TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study issues relating to the authority of State agencies to enter into guaranteed energy savings contracts. The topics to be considered by the Legislative Research Commission shall include, but are not limited to, whether State agencies should be authorized to enter into guaranteed energy savings contracts and, if so, how this authority should be implemented. In conducting the study authorized by this section, the Legislative Research Commission may consider the findings, recommendations, and legislative proposals of the Report to the 1993 General Assembly from the Legislative Research Commission Committee on Ways to Promote the Conservation of Energy and the Use of Renewable Energy Sources in Residential, Commercial, Industrial, and Public Facilities. The Legislative Research Commission shall present

its findings and recommendations, if any, to the 2000 Regular Session of the 1999 General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 1213*

Short Title: Sunset/Term of Energy Savings Contracts. (Public)

Sponsors: Representative Rogers.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight years from the date of~~ two-thirds of the anticipated remaining useful life of the facility after the installation ~~or acceptance by the local governmental unit~~ or commencement of the energy conservation measures provided for under the ~~contract.~~ contract or 25 years, whichever is less.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings

contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings ~~contract.~~ contract, in accordance with manufacturer's standards or other reasonable standards specifically provided in the guaranteed energy savings contract."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

"~~Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999.~~"

Section 5. Sections 1 through 3 of this act become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections of this act are effective upon ratification.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1143 A BILL TO BE ENTITLED AN ACT TO INCREASE THE MONTHLY EXPENSE ALLOWANCE, PER DIEM RATE, AND MILEAGE REIMBURSEMENT OF MEMBERS OF THE GENERAL ASSEMBLY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1164 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL GOVERNMENTAL UNITS TO TAKE SAVINGS ASSOCIATED WITH OPERATIONS COSTS INTO ACCOUNT, TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS, AND TO REPEAL THE SUNSET.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1213 A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☒ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☒ Committee Substitute for
S.B. 56 A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET REGARDING THE AUHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill , ☒ which changes the title, unfavorable as to Senate committee substitute bill and recommend that the bill be re-referred to the Committee on FINANCE.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

Considerable discussion followed. Rep. Decker requested information on municipal incorporations from 1995-1999.

The Chairman announced that HB 964 would be carried over until the Committee's next meeting.

The meeting adjourned at 11:00 a.m.

Rep. Martin Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **May 26, 1999**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Straub	Energy Division
Ron Akins	GNANC
Paul McCartney	NCGPSWCWMOD
Mary Carmilia	Mecklenburg County
Alice Garland	Electricities
Angela Gatlin	Cucalorus Observer
Lisa Master	Upper Neuse River Basin Assoc.
Jim Conely	NCPLA Raleigh
Tom Cooper	CPL
Kristin Carstens	SO
Donald Clark	Johnson Controls, Inc.
Carl Conner	N.C.C.M.
Pat O'Brien	PFFPNC
David Hudgins	PFFPNC
E. Robinson	G.A.
Richard Williams	NCHBA
Walter Price	Ct. Chamber
Bob Steelman	NC Forestry Assoc
ELLIS HANKINS	NCLM
Fred P Baggett	High Point
David Simmons	20A, PA
S. Lynne Hamlet	NCGA
Ken Mason	observer Times
Paul Stock	NCBA

House Committee
on
Ways and Means

Minutes
June 2, 1999

The House Ways & Means Committee met at 10:00 a.m. on Wednesday, June 2, 1999, at 10:00 a.m. in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order at 10:10 a.m. The first order of business was consideration of a committee substitute for **HB 964 (Municipal Incorporation Process)** adopted from the Committee's last meeting.

Rep. Jarrell was recognized to explain the bill. She said that Section I of the bill requires the petition for incorporation before the Joint Legislative Commission on Municipal Incorporations to contain the following:

1. A statement that the proposed municipality will have a budget ordinance with estimated tax revenues of not less than 1/3 of total revenues (excluding public enterprises, gifts, grants, and loans) within the first full fiscal year following incorporation;
2. A statement that the municipality will offer four of the following services within the third fiscal year of incorporation---police protection, fire protection, solid waste collection, water distribution, street maintenance, street construction, street lighting, and zoning. Current law requires the proposed municipality to submit a plan that proposes at least two of the services.

Section 2 of the bill requires the proposed municipality to have a population density of at least 250 persons per square mile. This is in addition to the existing requirement of a permanent population of at least 100 persons.

Section 3 deletes the exception from the requirement that at least 40% of the area be developed for urban uses or dedicated as open space. This exception currently applies to proposed municipalities within two miles of the Atlantic Ocean, Albemarle Sound or Pamlico Sound.

Section 4 deletes a requirement that, for the Commission to make a positive recommendation on the proposed incorporation, the entire area meet the development criteria in the involuntary annexation statutes.

This section also requires the Commission to indicate the impact on other municipalities and counties of the diversion of already levied local taxes and State-shared revenues to support services in the proposed municipality.

Sections 5 through 11 provide that no municipality incorporated on or after January 1, 2000 shall be eligible to receive a variety of State funds if its adopted budget ordinance fails to meet the requirements as provided in Section I above.

Gerry Cohen from the Division of Bill Drafting was recognized. Rep. Cox wondered if the bill was supported by the NC League of Municipalities and County Commissions Association and was advised that it was.

Rep. Jarrell moved to give the committee substitute bill a favorable report, the original bill an unfavorable report, and to re-refer the committee bill to the Committee on Finance. Her motion passed.

SB 385 (Use of School Buses OK'd/U.S. Open) was before the Committee for consideration. Senator Howard Lee, bill sponsor, was recognized to explain the bill.

He said the bill basically would permit the use of school activity buses for transportation during the U.S. Open Golf Tournament in Pinehurst. The current law prohibits the use of school buses for purposes other than transporting students to and from school or to and from school-related activities. In 1998 and 1999, the General Assembly enacted legislation allowing for an exception to current law in order that certain county public school systems could permit the 1999 Special Olympics to use their buses.

Senate Bill 385 would allow the Moore County Board of Education to enter into a contract to permit the use of public school activity buses and other school property to serve the transportation needs for the U.S. Open Golf Tournament in Pinehurst from June 14, 1999 through June 20, 1999. The bill prohibits the use of State funds for the use and operation of the buses. The bill also provides that the State will not be liable for any damages and that Pinehurst, Inc. will be required to carry liability insurance covering any use and operation of the buses.

Committee discussion followed. Rep. Nesbitt asked what kind of compensation the Moore County Board of Education would be getting. He was advised that they would receive $40,000.

Rep. Warren asked who will be riding on these buses and was told that they were to be used explicitly for volunteers.

Gene Causby with the North Carolina Motor Coach Association said he opposed the bill. Rep. Michaux asked if private carriers had offered these services and Mr. Causby said they had.

Senator Lee said he did not feel that the Motor Coach industry would be hurt by this. Rep. Jarrell moved for a favorable report and the motion passed.

Senate Bill 927 (Blind Services Technical Changes) was next for consideration. Senator Ellie Kinnaird, bill sponsor, was recognized to explain the bill. She said it is a recommendation of the Division of Services for the Blind and that the bill makes numerous technical and stylistic changes to current law such as: 1) including the term "visually impaired" where the world "visually handicapped" is used; 2) deleting words and phrases that are no longer used in drafting new legislation; and 3) making it clear that any reference to "the Department" means the Department of Health and Human Services.

Further, The language of many of the statutes at issue in this bill has not been amended since the 1970s; therefore, the bill includes numerous stylistic changes. The stylistic changes do not substantively change the current law.

Under current law, DHHS is required to maintain a register of blind persons in North Carolina. This bill will require that those who are "visually impaired" also be maintained in DHHS's register. The term visually impaired is defined as a person who meets the following criteria:

1) Has a visual acuity of 20/100 or less with best correction with a progressive eye condition or a 30-degree field limitation.
2) Has best corrected central visual acuity of 20/70 or less in the better eye.
3) Has a chronic progressive eye pathology.
4) Has visual acuity better than 20/70 without progressive eye pathology that results in a functional handicap.

The bill repeals G.S. 111-15.1 that provides that a person "whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential" is eligible for relief under Article 2 of Chapter 11 (Aid to the Needy Blind). The bill also repeals G.S. 111-42(e) that defines "visually handicapped."

The bill makes the following substantive changes:

1) Repeals the provision that requires DHHS to maintain one or more bureaus of information and industrial aid.
2) Allows DHHS to foster maximum independence of blind and visually impaired persons through development of community-based support groups and related services.
3) Includes a definition of "blind person" and "visually impaired person" that is consistent with the federal definition of these terms.
4) Allows the Commission for the Blind to adopt rules to change set-aside rates for the Business Enterprises Program consistent with the needs of the Business Enterprises Program.
5) Increases the number of members on the Commission for the Blind from 11 to 13, and includes a provision that prevents any member from being appointed to more than two consecutive 3-year terms. Increases the number of members who must be visually impaired from 6 to 7.

Debbie Jackson from the Division of the Blind was recognized. She said the Division had requested the bill to come into compliance with certain federal laws.

Rep. Michaux moved to give the bill a favorable report and the motion passed.

The Committee adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

Debbie Jackson from the Division of the Blind was recognized. She said the Division had requested the bill to come into compliance with certain federal laws.

Rep. Michaux moved to give the bill a favorable report and the motion passed.

The Committee adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Jan Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
June 2, 1999
10:00 a.m.
Room 1228

10:00 a.m. Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 964 Municipal Incorporation Process **(Jarrell)** *Committee Substitute Adopted--motion to give Com Sub a favorable Report, Unfavorable to original bill and to re-refer to Finance Committee is before the Committee. Motion by Rep. Jarrell.*

HB 1114 Enhancing Emergency Medical Services **(Wright)**
HB 1120 Authorize Public Hospital Debt **(Wright)**

HB467 **SB 385** Use of School Buses/ US Open (**Lee**)
SB 927 Blind Services Technical Changes **(Kinnaird)**
SB 1004 Geologist Licensure **(Kinnaird)**

ADJOURNMENT

HOUSE BILL 964:
Municipal Incorporation Process

BILL ANALYSIS

Committee:	House Ways and Means Commitee	**Introduced by:**	Rep. Jarrell
		Summary by:	Tim Hovis Committee Counsel
Date:	May 25, 1999		
Version:	Proposed Committee Substitute		

SUMMARY: House Bill 964 makes various changes to the law concerning municipal incorporations.

Section 1 of the bill requires the petition for incorporation before the Joint Legislative Commission on Municipal Incorporations to contain the following:

> *(1) A statement that the proposed municipality will have a budget ordinance with estimated tax revenues of not less than 1/3 of total revenues (excluding public enterprises, gifts, grants, and loans) within the first full fiscal year following incorporation;*
>
> *(2) A statement that the municipality will offer four of the following services within the third fiscal year of incorporation—police protection, fire protection, solid waste collection, water distribution, street maintenance, street construction, street lighting, and zoning. Current law requires the proposed municipality to submit a plan that proposes at least two of the services.*

Section 2 of the bill requires the proposed municipality to have a population density of at least 250 persons per square mile. This is in addition to the existing requirement of a permanent population of at least 100 persons.

Section 3 deletes the exception from the requirement that at least 40% of the area be developed for urban uses or dedicated as open space. This exception currently applies to proposed municipalities within two miles of the Atlantic Ocean, Albemarle Sound or Pamlico Sound.

Section 4 deletes a requirement that, for the Commission to make a positive recommendation on the proposed incorporation, the entire area meet the development criteria in the involuntary annexation statutes.

This section also requires the Commission to indicate the impact on other municipalities and counties of the diversion of already levied local taxes and State-shared revenues to support services in the proposed municipality.

Sections 5 through 11 provide that no municipality incorporated on or after January 1, 2000 shall be eligible to receive a variety of State funds if its adopted budget ordinance fails to meet the requirements as provided in Section 1 above.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 964
Proposed Committee Substitute H964-PCS3421-LB

Short Title: Municipal Incorporation Process. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MUNICIPAL INCORPORATION PROCESS SO AS TO PROVIDE MORE SCRUTINY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-163(c) reads as rewritten:

"(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance estimating revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the General Statutes of not less than one third (1/3) of its total estimated revenues (excluding revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts, grants, and loans) no later than the first full fiscal year following the effective date of the incorporation. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or

another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas."

Section 2. G.S. 120-167 reads as rewritten:

"**§ 120-167. Additional criteria; population.**

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least ~~100.~~ 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile."

Section 3. G.S. 120-168 reads as rewritten:

"**§ 120-168. Additional criteria; development.**

~~Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the~~ The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants."

Section 4. G.S. 120-169.1 reads as rewritten:

"**§ 120-169.1. Additional criteria; level of development, ~~services.~~ services; financial impact on other local governments.**

~~(a) Level of Development. -- The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).~~

(b) Services. -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c). ~~To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:~~

~~(1) Police protection.~~
~~(2) Fire protection.~~
~~(3) Garbage and refuse collection or disposal.~~
~~(4) Water distribution.~~
~~(5) Sewer collection or disposal.~~
~~(6) Street maintenance, construction, or right-of-way acquisition.~~
~~(7) Street lighting.~~
~~(8) Adoption of citywide planning and zoning.~~

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

Section 5. G.S. 136-41.2 reads as rewritten:

"**§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.**

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal

requirement that the most recent required election shall have been held may be waived only:

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality incorporated with an effective date prior to January 1, 2000, shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars ($100.00) valuation upon all taxable property within its corporate limits, and no municipality incorporated with an effective date on or after January 1, 2000, shall be eligible to receive funds under G.S. 136-41.1 if its adopted budget ordinance estimates revenues from sources adopted in the ordinance under Article 9 of Chapter 160A of the General Statutes of less than one third (1/3) of its total estimated revenues (excluding revenues from public enterprises as defined by G.S. 160A-111 and excluding gifts, grants, and loans), and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal ~~services.~~ services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street ~~lighting.~~ lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945."

Section 6. G.S. 105-472 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 7. G.S. 105-486 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 8. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 9. G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.
(2) The Property Tax Commission.
(3) The Institute of Government in operating a training program in property tax appraisal and assessment.
(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Section 10. G.S. 105-113.82 is amended by adding a new subsection to read:

"(h) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:

"(e) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2."

Section 12. Section 1 of this act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Corporations makes recommendations on or after the date this act becomes law. The remainder of this act is effective when it becomes law.

6-2-99

Gerry Cohen (Bill Drafting, Director)

From: Marianne Frederick [mfrederi@dca.commerce.state.nc.us]
Sent: Friday, May 28, 1999 2:54 PM
To: Gerry Cohen (Bill Drafting, Director)
Cc: John Berndt
Subject: Information on Recent Incorporations

Here is the available density information on recently-incorporated municipalities that you requested. John Berndt and I have discussed this information. If you have any questions about the information, please call or E-Mail me. Best wishes, Marianne

Summary
This list summarizes whether each municipality would have qualified under the population density of 250 persons criteria, based on available information on density.

Municipality
Flat Rock-density would qualify
Summerfield-density would qualify (before annexations)
Bogue-insufficient information available
Sloop Point-insufficient information available
Peletier-density would not qualify (unless there is seasonal population)
Cedar Rock-density would qualify
Forest Hills-insufficient information available
Grantsboro-density would not qualify (unless there is seasonal population)
Pleasant Garden-density would qualify
Sedalia-density would qualify
Swepsonville-density would qualify
Trinity-density would qualify
Carolina Shores-density would qualify
Hemby Bridge-density would qualify
Oak Ridge-insufficient information available
Wesley Chapel-density would qualify

Of 16 municipalities, 10 would have qualified under the new density criteria, 2 would not have qualified (unless there is seasonal population), and there was insufficient information available on 4 municipalities to make a determination.

1995

Municipality: Flat Rock

1996 League of Municipalities Book:
Population: 1778
Land Area: not listed

1997 League of Municipalities Book:
Population: 1806
Land Area: not listed

1998 League of Municipalities Book:
Population: 1836
Land Area in Square Miles: 5.94
-Persons per Square Mile: 309

1999 League of Municipalities Book:
Population: 1873
Land Area in Square Miles: 5.94
-Persons per Square Mile: 315

Municipality: Summerfield

1997 League of Municipalities Book:
Population: 1769
Land Area: not listed

1998 League of Municipalities Book:
Population: 5794

Land Area: not listed

1999 League of Municipalities Book:
Population: 5932
Land Area: not listed

State Demographer:
Population Estimate before Annexations: 1687
Land Area in Square Miles before Annexations: 6.08
-Persons per Square Mile: 277

Population Estimate after Annexations: 5875
Land Area in Square Miles after Annexations: 25.80
-Persons per Square Mile after Annexations: 228

Municipality: Bogue

1997 League of Municipalities Book:
Population: 447
Land Area: not listed

1998 League of Municipalities Book:
Population: 465
Land Area: not listed

1999 League of Municipalities Book:
Population: 482
Land Area: not listed

State Demographer did not have a figure for land area.

1996

Municipality: Sloop Point

1997 League of Municipalities Book:
Population: 20
Land Area: not listed

1998 League of Municipalities Book:
Population: 21
Land Area: not listed

State Demographer did not have a figure for land area.

Municipality: Peletier

1998 League of Municipalities Book:
Population: 336
Land Area in Square Miles: 4.27
-Persons per Square Mile: 79

1999 League of Municipalities Book:
Population: 340
Land Area in Square Miles: 4.27
-Persons per Square Mile: 80

1997

Municipality: Cedar Rock

No population or land area listed in League of Municipalities Book

State Demographer:
1997 Population Estimate: 336
1997 Land Area in Square Miles: 1.14
-Persons per square mile: 295

Municipality: Forest Hills

No population or land area listed in League of Municipalities Book

State Demographer:
1997 Population estimate: 341
No information on land area

Municipality: Grantsboro

1999 League of Municipalities Book:
Population: 452
Land Area in Square Miles: 3.68
-Persons per Square Mile: 123

Municipality: Pleasant Garden

1998 League of Municipalities Book:
Population: 4270
Land Area: not listed

1999 League of Municipalities Book:
Population: 4374
Land Area in Square Miles: 12
-Persons per Square Mile: 364

Municipality: Sedalia

1998 League of Municipalities Book:
Population: 588
Land Area in Square Miles: 1.99
-Persons per Square Mile: 295

1999 League of Municipalities Book:
Population: 596
Land Area in Square Miles: 1.99
-Persons per Square Mile: 299

Municipality: Swepsonville

1999 League of Municipalities Book:
Population: 758
Land Area: not listed

State Demographer:
1997 Population Estimate: 505
Land Area in Square Miles: .6
-Persons per Square Mile: 842
(Some annexations took place in June 1998)

Municipality: Trinity

1998 League of Municipalities Book:
Population: 6455
Land Area in Square Miles: 17.12
-Persons per Square Mile: 377

1999 League of Municipalities Book:
Population: 7157
Land Area in Square Miles: 17.12
-Persons per Square Mile: 418

1998

Municipality: Carolina Shores

State Demographer:
Population Estimate: 1338
Land Area in Square Miles: 1.37
Persons per Square Mile: 977

Municipality: Hemby Bridge

From Petition:
Estimated Population: 814
Estimated Land Area in Square Miles: 1.8
-Persons per Square Mile: 452

Municipality: Oak Ridge

1999 League of Municipalities Book:
Population: 2565
Land Area: not listed

State Demographer:

1997 Estimated Population: 2565
Land Area: not available

Municipality: Wesley Chapel

From Petition:
Estimated Population: 1073
Estimated Land Area in Square Miles: 3.9
-Persons per Square Mile: 275

From our Estimates:
Estimated Population: 1088
Estimated Land Area in Square Miles: 3.9
-Persons per Square Mile: 279
Note: The actual boundaries used for the incorporation were different from those originally submitted for our analysis, so these figures may vary somewhat from the area finally incorporated.

Source notes:
League of Municipalities Book. This is the North Carolina League of Municipalities Directory of North Carolina Municipal Officials and Buyers Guide that is published each year. The population estimates in this book are the last official Office of State Management and Budget estimates, adjusted to the boundaries of the municipality as of the July previous to the publication of the Directory. (For example, in the 1999 Directory, the population estimates are for July 1997, adjusted to the boundaries of the municipality as of July 1998).

State Demographer. This information was obtained by the State Library in a phone conversation with Mr. Bill Tillman, the State Demographer.

Persons per Square Mile was computed by me, based on the information available from the other sources.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 385
Second Edition Engrossed 4/19/99

Short Title: Use of Sch. Buses OK'd/U.S. Open. (Local)

Sponsors: Senators Lee and Kinnaird.

Referred to: State and Local Government.

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE MOORE COUNTY BOARD OF EDUCATION TO PERMIT THE USE OF PUBLIC SCHOOL ACTIVITY BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE U. S. OPEN GOLF TOURNAMENT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 66-58 or any other provision of law, the Moore County Board of Education may enter into a contract, under terms and conditions set by the Moore County Board of Education, that permits public school activity buses and other school property to be used from June 14, 1999, through June 20, 1999, for activities related to the U.S. Open Golf Tournament to be held in Moore County.

State funds shall not be used for the use and operation of buses under this act.

The State of North Carolina shall incur no liability for any damages resulting from the use and operation of buses under this act. Pinehurst, Inc., shall carry liability insurance covering the use and operation of buses under this act.

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

SENATE BILL 385:
Use of School Buses OK'd/U.S. Open

BILL ANALYSIS

Committee: House Ways and Means
Date: June 2, 1999
Version: Second Edition

Introduced by: Senators Lee and Kinnaird
Summary by: Tim Hovis
Committee Counsel

SUMMARY: Senate Bill 385 would permit the use of school activity buses for transportation during the U.S. Open Golf Tournament in Pinehurst.

CURRENT LAW: Current law prohibits the use of school buses for purposes other than transporting students to and from school or to and from school-related activities. In 1998 and 1999, the General Assembly enacted legislation allowing for an exception to current law in order that certain county public school systems could permit the 1999 Special Olympics to use their buses.

BILL ANALYSIS: Senate Bill 385 would allow the Moore County Board of Education to enter into a contract to permit the use of public school activity buses and other school property to serve the transportation needs for the U.S. Open Golf Tournament in Pinehurst from June 14, 1999 through June 20, 1999. The bill prohibits the use of State funds for the use and operation of the buses. The bill also provides that the State will not be liable for any damages and that Pinehurst, Inc. will be required to carry liability insurance covering any use and operation of the buses.

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

This summary was contributed to by Ms. Mary Shuping, Research Assistant, Research Division.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 927
Second Edition Engrossed 4/22/99

Short Title: Blind Services Technical Changes. (Public)

Sponsors: Senators Kinnaird; and Phillips.

Referred to: Children & Human Resources.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES NECESSITATED BY CHANGES IN FEDERAL LAW TO THE GENERAL STATUTES CONCERNING SERVICES FOR THE BLIND AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 111-4 reads as rewritten:

"**§ 111-4. Register of State's ~~blind.~~ blind and visually impaired.**

(a) ~~It shall be the duty of the~~ The Department of Health and Human Services ~~to~~ shall cause to be maintained a complete register of the blind and visually impaired in the State ~~of North Carolina, which~~ that shall describe the ~~condition,~~ condition and cause of ~~blindness, capacity for education and industrial training~~ blindness of ~~each, with such~~ each and any other facts ~~as~~ that may seem to the Department of Health and Human Services to be of value.

(b) When, upon examination by a physician or optometrist, any person is found to be blind or visually impaired, the examiner shall report the results of the examination to the Department of Health and Human Services within 30 days after the examination is conducted."

Section 2. G.S. 111-5 is repealed.

Section 3. G.S. 111-6 reads as rewritten:

"**§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.**

The Department of Health and Human Services may establish one or more training schools and workshops for employment of suitable blind and visually

impaired ~~persons~~ persons, ~~and shall be empowered to~~ equip and maintain ~~the same,~~ these schools and workshops, ~~to~~ pay ~~to~~ employees suitable wages, ~~and to~~ devise means for the sale and distribution of the products ~~thereof,~~ of these schools and workshops, and ~~may~~ cooperate with shops already established. The Department of Health and Human Services may also pay for lodging, tuition, support and all necessary expenses for blind and visually impaired persons during their training or ~~instructions~~ instruction in any suitable occupation, whether it be in industrial, commercial, ~~or professional~~ professional, or any other establishments, schools or institutions, or through private instruction ~~wherever~~ when in the judgment of the Department ~~such~~ of Health and Human Services this instruction or training can be ~~obtained, when in its judgment~~ obtained and ~~the training or instruction in question~~ will contribute to the efficiency or self-support of ~~such~~ the blind and visually impaired persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the ~~Department,~~ Department of Health and Human Services, outside of the State. The Department of Health and Human Services may ~~also, whenever it thinks proper,~~ also aid individual blind and visually impaired persons or groups of blind and visually impaired persons to become self-supporting by furnishing material or equipment to ~~them, and may also assist~~ them and by assisting them in the sale and distribution of their products. Any portion of the funds appropriated to the Department of Health and Human Services under the provisions of this Chapter providing for the rehabilitation of the blind and visually impaired and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 ~~to 111-26, and whenever~~ through G.S. 111-26. Whenever possible such funds may be matched by funds provided by the federal Social Security ~~Act.~~ Act, 42 U.S.C. § 301, et seq., as amended."

Section 4. G.S. 111-6.1 reads as rewritten:

"**§ 111-6.1. Rehabilitation center for the adult blind.**

~~In addition to other powers and duties granted it by law, the~~ The Department of Health and Human Services ~~is hereby authorized and directed to~~ shall establish and operate a rehabilitation center for the blind for the purpose of ~~assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.~~ evaluating and providing instruction in specialized independent living, prevocational, and vocational skills to blind and visually impaired persons to prepare them for obtaining and maintaining employment.

The Commission shall make all rules ~~and regulations~~ necessary for this purpose and the Department ~~is hereby authorized to~~ of Health and Human Services may enter into any agreement or contract; to purchase or lease property, both real and personal, to accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of ~~such a~~ this rehabilitation center.

The Department of Health and Human Services ~~is hereby authorized to~~ may receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for ~~the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190). Visually handicapped~~ blind and visually impaired persons under the provisions of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended. Blind and visually impaired persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the ~~Barden-Rehabilitation Act.~~ Rehabilitation Act of 1973, as amended."

Section 5. G.S. 111-7 reads as rewritten:

"**§ 111-7. ~~Promotion visits.~~ In-home services.**

The Department of Health and Human Services may ~~ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Health and Human Services may deem advisable.~~ foster maximum independence of blind and visually impaired persons through the provision of in-home independent living, development of community-based support groups, and related services as it deems advisable."

Section 6. G.S. 111-8 reads as rewritten:

"**§ 111-8. Investigations; eye examination and treatment.**

~~It shall be the duty of this [the]~~ The Department of Health and Human Services ~~to~~ shall continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are ~~preventable~~ preventable, and to inaugurate and cooperate in any ~~such~~ measure for the State ~~of North Carolina as may seem wise.~~ it deems advisable. The Department of Health and Human Services may arrange for the examination of the eyes of ~~the individual~~ blind and ~~partially blind~~ visually impaired persons and may secure and pay for medical and surgical treatment for ~~such~~ these persons whenever in the judgment of a qualified ophthalmologist or optometrist the eyes of ~~such~~ this person may be benefited ~~thereby.~~ by the treatment."

Section 7. G.S. 111-8.1 is repealed.

Section 8. G.S. 111-11 reads as rewritten:

"**§ 111-11. ~~Definition of visually handicapped person.~~ Definitions.**

For ~~purpose~~ the purposes of this ~~Chapter, visually handicapped persons are those persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential.~~ Chapter, the following definitions apply:

(1) "Blind person" means a person who meets any of the following criteria:

a. Is totally blind.

b. Has central visual acuity that does not exceed 20/200 in the better eye with correcting lenses.

c. Has a visual field that subtends an angle no greater than 20 degrees at its widest diameter.

(2) "Visually impaired person" means a person who meets any of the following criteria:

a. Has a visual acuity of 20/100 or less with best correction with a progressive eye condition or a 30 degree field limitation.

b. Has best corrected central visual acuity of 20/70 or less in the better eye.

c. Has a chronic progressive eye pathology.

d. Has visual acuity better than 20/70 without progressive eye pathology that results in a functional handicap."

Section 9. G.S. 111-12.6 reads as rewritten:

"**§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.**

All funds required under this Article to be deposited with or which have been ~~heretofore~~ transferred to the State Treasurer by the Bureau of Employment of the Department of Health and Human Services, and all future net earnings and accumulations of ~~said~~ the Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund ~~herein provided for,~~ provided for in G.S. 111-12.5, from whatever source ~~or sources~~ shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from the corpus shall inure to the sole benefit of the Department of Health and Human Services. The income and corpus shall be expended for services to and for the benefit of ~~visually handicapped~~ blind and visually impaired persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget."

Section 10. G.S. 111-14 reads as rewritten:

"**§ 111-14. Application for benefits under Article; investigation and award by county commissioners.**

Any person claiming ~~benefit~~ benefits under this ~~Article,~~ Article shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Health and Human ~~Services, which~~ Services. This application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State ~~of North Carolina and~~ who is actively engaged in the treatment of diseases of the human ~~eye,~~ eye or by an optometrist, whichever the individual may select, ~~to the effect~~ stating that the applicant is ~~blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.~~ blind. ~~Such~~ This application may be made on the behalf of any ~~such~~ blind person by the Department of Health and Human ~~Services,~~ Services or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified ~~person, or persons,~~ person designated as ~~their agents~~ its agent for this purpose and shall pass upon the ~~said~~ application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application,

~~they~~ the board of county commissioners may take into consideration the facts set forth in the ~~said application,~~ application and any other facts that are deemed necessary, and may at any ~~time, within their discretion,~~ time require an additional examination of the applicant's eyes by an ophthalmologist designated by the Department of Health and Human Services. When satisfied with the merits of the application, the board of county commissioners shall allow the ~~same~~ application and grant to the applicant ~~such~~ any proper relief ~~as may be suitable and proper,~~ according to the rules ~~and standards~~ established by the Commission for the ~~Blind, not inconsistent with this Article and in accordance with the further provisions hereof.~~ Blind."

Section 11. G.S. 111-15(1) is repealed.

Section 12. G.S. 111-16 reads as rewritten:

"**§ 111-16. Application for aid; notice of award; review.**

Promptly after an application for aid is made to the board of county commissioners under this ~~Article~~ Article, the Department of Health and Human Services shall be notified ~~thereof~~ of the application by ~~mail,~~ mail by ~~said~~ the county ~~commissioners, and one~~ commissioners. One of the duplicate applications for aid made before the board of county commissioners shall be transmitted with ~~said~~ this notice.

As soon as any award has been made or any application declined by the board of county commissioners, ~~or any application declined,~~ prompt notice ~~thereof in writing~~ in writing of the award or the declined application shall be forwarded by mail to the Department of Health and Human Services and to the ~~applicant, in which shall be fully stated~~ applicant. This notice shall fully state the particulars of the award or the facts of denial. An applicant may appeal an award or denial pursuant to Article 3 of Chapter 150B of the General Statutes.

~~Within a reasonable time, in accordance with rules and regulations adopted by the Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the Department of Health and Human Services copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.~~

~~As soon as may be practicable after the receipt of the said notice of appeal, the Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission for the Blind, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the Department of Health and Human Services, except that notice of the time and place where the hearings of~~

~~such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.~~

~~In all cases where an appeal shall have been taken by the applicant, the Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action; and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.~~

~~If, in the absence of any appeal by the applicant, the North Carolina Department of Health and Human Services shall make any determination increasing or decreasing the award allowing or disallowing the same, not inconsistent with the rules and regulations promulgated by the Commission for the Blind, the applicant or board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the Commission for the Blind. The procedure in such cases shall be as provided in the section on appeals to the Commission by the applicant.~~"

Section 13. G.S. 111-18.1(b) reads as rewritten:

"(b) In the event of the death of a recipient of a cash payment ~~service, as defined by regulation of the N. C. Commission for the Blind, which~~ service that was rendered as ~~a~~ part of a program of public assistance for the blind or visually ~~handicapped,~~ impaired, any check ~~or checks~~ issued for the payment of ~~such~~ that service made payable to ~~such~~ that recipient, but not endorsed prior to ~~his~~ the recipient's death, shall be returned to the issuing agency and made void. The issuing agency shall then issue a check payable to the provider of ~~such~~ the service for the sum remaining due for this service, not to exceed the amount of ~~said~~ the returned and voided ~~check or checks.~~ check."

Section 14. G.S. 111-27 reads as rewritten:

"**§ 111-27. Department of Health and Human Services to promote employment of ~~needy~~ blind persons; vending stands on public property.**

For the purpose of assisting blind persons to become self-supporting, the Department of Health and Human Services ~~is hereby authorized to~~ may carry on activities to promote the employment of ~~needy~~ blind persons, including the licensing and establishment of ~~such~~ blind persons as operators of vending stands in public buildings. The ~~said~~ Department of Health and Human Services may cooperate with the federal government in the furtherance of the ~~provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688)~~ Randolph-Sheppard Vending Stand Act, 20 U.S.C. § 107-107f, as amended, providing for the licensing of blind persons to operate vending stands in federal buildings, or any other ~~acts~~ act of Congress ~~which~~ that may be ~~hereafter~~ enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings ~~are hereby authorized and empowered to~~ may permit the operation of vending stands by ~~needy~~ blind persons on

the premises of any State, county or municipal property under their respective ~~jurisdictions: Provided, that such~~ jurisdictions. These operators shall be first licensed by the Department of Health and Human ~~Services: Provided further, that~~ Services. Additionally, no vending stands may be operated unless, in the opinion of the commissions or officials having control and custody of ~~such~~ the property, ~~such~~ the vending stands may be properly and satisfactorily operated on ~~such~~ the premises without undue interference with the use and needs ~~thereof~~ of the premises or property for public purposes."

Section 15. G.S. 111-27.1 reads as rewritten:

"**§ 111-27.1. Department of Health and Human Services authorized to conduct certain business operations.**

For the purpose of assisting blind and visually impaired persons to become self-supporting the Department of Health and Human Services ~~is hereby authorized to~~ may carry on activities to promote the rehabilitation and employment of the ~~blind,~~ blind and visually impaired, including employment in or the operation of various business enterprises suitable for the blind ~~to be employed in or to operate.~~ and visually impaired. The Executive Budget Act ~~shall apply~~ applies to the operation of ~~such~~ these enterprises as to all appropriations made by the State to aid in the organization and the establishment of ~~such~~ these businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind and visually impaired persons operating ~~such~~ these businesses, and other expenses ~~thereof,~~ of these businesses from funds derived from local subscriptions and from the day-by-day operations ~~shall not be~~ are not subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement ~~thereof applicable~~ that apply to State funds but shall be supervised by the Department of Health and Human Services. All of the business operations under this ~~law, however, shall be~~ law are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

~~After September 30, 1983,~~ Randolph-Sheppard vendors ~~will no longer be~~ are not State employees. Blind licensees operating vending facilities under contract with the ~~North Carolina~~ Department of Health and Human Services, Division of Services for the Blind, are independent contractors."

Section 16. G.S. 111-28 reads as rewritten:

"**§ 111-28. Department of Health and Human Services authorized to receive ~~federal, etc.,~~ grants for benefit of ~~needy blind~~; blind and visually impaired; use of information concerning blind persons.**

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the ~~needy blind~~ blind, visually impaired, and those in danger of becoming ~~blind; and all such~~ blind. All of these grants ~~so made and received~~ shall be paid into the State ~~treasury~~ Treasury and credited to the account of the Department of Health and Human Services, to be used in carrying out the provisions of this law.

The Commission for the Blind ~~is hereby further authorized and empowered to make such~~ may adopt rules ~~and regulations~~ as may be required by the federal government or State or federal agency as a condition for receiving ~~such~~ these federal funds, not inconsistent with the laws of this State.

~~Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.~~

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may enter into reciprocal agreements with public welfare agencies in other states ~~relative to the provision of~~ regarding assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of ~~such~~ assistance and services and in the study of the problems involved.

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may establish and enforce reasonable rules ~~and regulations~~ governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It ~~shall be~~ is unlawful, except for purposes directly connected with the administration of aid to the ~~needy~~ blind and visually impaired and in accordance with the rules ~~and regulations~~ of the Department of Health and Human Services, for any person ~~or persons~~ to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the ~~needy blind,~~ blind and visually impaired, directly or indirectly derived from the records, papers, files, or communications of the Department of Health and Human ~~Services or~~ Services, the board of county ~~commissioners~~ commissioners, or the county social services department, or acquired in the course of the performance of official duties.

~~Notwithstanding the above, the~~ The Department of Health and Human Services ~~is authorized to~~ may release to the ~~North Carolina Department~~ Division of Motor Vehicles in the Department of Transportation and to the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind and visually impaired in this State maintained under the provisions of G.S. 111-4. All information and documents released to the ~~Department~~ Division of Motor Vehicles and the Department of Revenue shall be treated by ~~those departments~~ them as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General ~~Statutes of this State.~~ Statutes. The Department of Health and Human Services may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind and visually impaired in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly

connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped."

Section 17. G.S. 111-28.1 reads as rewritten:

"**§ 111-28.1. Department of Health and Human Services authorized to cooperate with federal government in rehabilitation of ~~blind.~~ blind and visually impaired.**

The Department of Health and Human Services ~~is hereby authorized and empowered to make~~ may adopt the necessary rules ~~and regulations~~ to cooperate with the federal government in the furtherance of the ~~provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190)~~ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended, providing for the rehabilitation of the ~~blind.~~ blind and visually impaired."

Section 18. G.S. 111-41 reads as rewritten:

"**§ 111-41. Preference to ~~visually handicapped~~ blind persons in operation of vending facilities; responsibility of Department of Health and Human Services.**

In order to promote the employment and the self-sufficiency of ~~visually handicapped~~ blind persons in North Carolina, State agencies shall upon the request of the Department of Health and Human Services give preference to ~~visually handicapped~~ blind persons in the operation of vending facilities on State property. The Department of Health and Human Services shall encourage and assist the operation of vending facilities by ~~visually handicapped~~ blind persons."

Section 19. G.S. 111-42(e) is repealed.

Section 20. G.S. 111-43 reads as rewritten:

"**§ 111-43. Installation of coin-operated vending machines.**

In locations where the Department of Health and Human Services determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department of Health and Human Services shall be used by the Department for the support of programs that enable blind and visually impaired people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind."

Section 21. G.S. 111-44 reads as rewritten:

"**§ 111-44. Location and services provided by State agency.**

If the Department of Health and Human Services ~~shall determine~~ determines that a location is suitable for the operation of a vending facility by a ~~visually handicapped~~ blind person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in the alteration and renovation of the present location. The State agency shall provide necessary utilities, janitorial ~~services~~ service, and garbage disposal for the operation of the vending facility. Space and services for the vending facilities ~~and service therefor~~ shall be provided without charge."

Section 22. G.S. 111-45 reads as rewritten:

"**§ 111-45. Duty of State agency to inform ~~Department.~~ the Department of Health and Human Services.**

It shall be the duty of the State agencies to inform the Department of Health and Human Services of existing and prospective locations for vending facilities and coin-operated vending machines and to ~~prescribe regulations (upon~~ adopt rules, upon request of the ~~Department)~~ Department, to promote the successful operation of the vending facilities of the ~~visually handicapped.~~ blind."

Section 23. G.S. 111-46 reads as rewritten:

"**§ 111-46. Vending facilities operated by those other than ~~visually handicapped~~ blind persons.**

Where vending facilities on State property are operated by those other than ~~the visually handicapped~~ blind persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Health and Human Services is notified ~~thereof~~ of the proposed renewal or extension and ~~he~~ the Secretary determines within 30 days of ~~such~~ this notification that the vending facilities are not, or cannot become, suited for operation by the ~~visually handicapped.~~ blind. ~~However, if~~ If the Secretary of the Department of Health and Human Services within 30 days of the date of ~~such~~ this notification fails to provide for the operation of the vending facilities by the ~~visually handicapped,~~ blind, the existing contract may be renewed or extended."

Section 24. G.S. 111-50(b)(3) is repealed.

Section 25. G.S. 111-50 is amended by adding a new subsection to read:

"(c) The Commission for the Blind may adopt rules to change applicable set-aside rates for the Business Enterprises Program consistent with the needs of the Business Enterprises Program."

Section 26. G.S. 143B-157(3b) reads as rewritten:

"(3b) The Commission shall advise the Department regarding preparation of applications, the State Plan, ~~the strategic plan,~~ amendments to ~~these plans,~~ this plan, the State needs assessments, and the evaluations required by the federal rehabilitation program; and in partnership with the Department develop, agree to, and review State goals and priorities;"

Section 27. G.S. 143B-157(3e) reads as rewritten:

"(3e) The Commission shall coordinate with other councils within the State, including the statewide Independent Living Council established under section 705 of the federal Rehabilitation Act, ~~29~~ 29 U.S.C. § 720, et seq., the advisory panel established under section ~~613(a)(12)~~ 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(A)(12), the ~~State Planning~~ Council on Developmental Disabilities described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, ~~and~~ the State Mental Health Planning Council established pursuant to section 1916(e) of the Public Health

Service Act, 42 U.S.C. § ~~300x-4(e);~~ 300x-4(e), and the Commission on Workforce Preparedness;"

Section 28. G.S. 143B-158 reads as rewritten:

"**§ 143B-158. Commission for the Blind -- members; selection; quorum; compensation.**

The Commission for the Blind of the Department of Health and Human Services shall consist of ~~11~~ 13 members appointed by the Governor. ~~No~~ A physician, ~~no~~ optometrist, ~~no~~ optician, ~~no oculist,~~ or oculist ~~nor any other person who receives services or funds regulated by the Commission shall be qualified to~~ shall not serve on the Commission for the Blind. Any person who is presently a member of the Commission and is disqualified ~~by reason of the preceding sentence~~ under this section shall ~~be deemed to have resigned~~ resign his or her position on the ~~Commission. The~~ Commission and the Governor shall appoint a successor for the balance of the unexpired term. At all times at least ~~six~~ seven members of the Commission shall be persons who are visually ~~handicapped~~ impaired to the minimum extent of being legally blind. The members of the Commission shall be appointed for terms of ~~six~~ three years and shall serve until their successors are appointed and qualify. No individual may be appointed to more than two consecutive three-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor ~~shall have the power to~~ may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with ~~the provisions of~~ G.S. ~~143B-13 of the Executive Organization Act of 1973.~~ 143B-13.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with ~~the provisions of~~ G.S. 138-5.

A majority of the Commission ~~shall constitute~~ constitutes a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services."

Section 29. This act is effective when it becomes law.

6-2-99

SENATE BILL 927:
Blind Services Technical Changes

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Kinnaird
		Summary by:	Tim Hovis Committee Counsel
Date:	June 2, 1999		
Version:	Second Edition		

SUMMARY: This bill is a recommendation of the Division of Services for the Blind. The bill makes numerous technical and stylistic changes to current law such as: 1) including the term "visually impaired" where the word "visually handicapped" is used; 2) deleting words and phrases that are no longer used in drafting new legislation; and 3) making it clear that any reference to "the Department" means the Department of Health and Human Services. This bill makes the following substantive changes:

1) Repeals the provision that requires DHHS to maintain one or more bureaus of information and industrial aid.

2) Allows DHHS to foster maximum independence of blind and visually impaired persons through development of community-based support groups and related services.

3) Includes a definition of "blind person" and "visually impaired person" that is consistent with the federal definition of these terms.

4) Allows the Commission for the Blind to adopt rules to change set-aside rates for the Business Enterprises Program consistent with the needs of the Business Enterprises Program.

5) Increases the number of members on the Commission for the Blind from 11 to 13, and includes a provision that prevents any member from being appointed to more than two consecutive 3-year terms. Increases the number of members who must be visually impaired from 6 to 7.

BILL ANALYSIS:

The language of many of the statutes at issue in this bill has not been amended since the 1970s; therefore, the bill includes numerous stylistic changes. The stylistic changes do not substantively change the current law.

Under current law, DHHS is required to maintain a register of blind persons in North Carolina. This bill will require that those who are "visually impaired" also be maintained in DHHS's register. The term visually impaired is defined as a person who meets the following criteria:

1) Has a visual acuity of 20/100 or less with best correction with a progressive eye condition or a 30-degree field limitation.

2) Has best corrected central visual acuity of 20/70or less in the better eye.

3) Has a chronic progressive eye pathology.

4) Has visual acuity better than 20/70 without progressive eye pathology that results in a functional handicap.

This bill repeals G.S. 111-15.1 that provides that a person "whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential" is eligible for relief under Article 2 of Chapter 11(Aid to the Needy Blind). The bill also repeals G.S. 111-42(e) that defines "visually handicapped."

This act is effective when it becomes law.

This summary was contributed to by Ms. Jo McCants, Research Division.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 964 A BILL TO BE ENTITLED AN ACT TO REVISE THE MUNICIPAL INCORPORATION PROCESS SO AS TO PROVIDE MORE SCRUTINY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ **With a favorable report as to committee substitute bill (#), unfavorable as to (original bill) and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.)**

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
S.B. 385 A BILL TO BE ENTITLED AN ACT TO PERMIT THE USE OF PUBLIC SCHOOL ACTIVITY BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE U.S. OPEN GOLF TOURNAMENT.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
S.B. 927 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES NECESSITATED BY CHANGES IN FEDERAL LAW TO THE GENERAL STATUTES CONCERNING SERVICES FOR THE BLIND AND TO MAKE TECHNICAL CHANGES.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Stocum	NC Forestry Association
Bill Wright	Town of Pleasant Garden
Anna Griffin	Charlotte Observer
James D. Ayres	Town of Pleasant Garden
Ann Bailie	Town of Pleasant Garden
Robert PARTIN	Town of SCOTLAND NECK
CARSON H DURHAM III	Town of SHALLOTTE
JAMES E. ROACH	TOWN OF SHALLOTTE
Joan Altman	Town of Long Beach
Lucius PuLLEN	Attorney
JOHN TWOMEY	Town of SHALLOTTE
Brian Shaw	Moore County Board of Education (Attorney)
Ruth Quinn	Town of Nagshead
Vicki Mercer	Town of Elm City
Leslie Atkinson	Town of Elm City
Valerie Durham	Town of Elm City
Patrice Pawlen	NCACC
Buddy Kelly	Town of Shallotte
Chad Hewett	Town of Shallotte
Clyde R Bellamy	Town of SHALLOTTE
R.W. Shears	Town of Shallotte

VISITOR REGISTRATION SHEET

Ways + Means — 6-2-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
ELLIS HANKINS	NCLM
RON AYCOCK	NC ASSN County CCM
Lucien Gosney	NC League
Jay Wilson	Senator Lee
David Tuttle	N.C. Bd. of Examiners for Engineers & Surveyors, Raleigh
Jerry Carter	" " " "
Robert Upton	NC Bd for Lic of Geol.
Charles Gardner	" " " & DENR/Land Resc.
Tom Oliver	BPMGL
Richard O'Brien	PFFPNC
DAVID R. ANDERS	PFFPNC
Gene Causby	NCMA
Willie Mintz	Kingstown
Linda Mintz	Kingstown
TOM GWYN	ELKIN
Lisa Martin Bonnette	Roxboro
Andy Romanet	N.C.L.M.
Ruth E. Smith	Sedalia, N.C Mayor
Prince E Smith	Sedalia NC 27342
M. K. Moody	Sylva, N.C. 28779
Brenda Oliver	Mayor-Town of Sylva - NC 28779
Kim Hibbard	NC League of Municipalities
Alice Garland	Electricities
Katherine Davis	"
Lisa Martin	Upper Neuse River Basin Assn.
Paul Wilms	NCMBA
Mike Compton	NCMBA

House Committee
on
Ways and Means

Minutes
June 9, 1999

The House Committee on Ways & Means met on Wednesday, June 9, 1999 at 10:00 a.m. in Room 1228. Rep. Martin Nesbitt, Chairman, called the meeting to order.

Rep. Thomas Wright was recognized to explain **House Bill 1114 (enhancing Emergency Medical Services)** to the Committee. A committee substitute was distributed to the members and Rep. Oldham moved that it be adopted. The motion passed.

Rep. Wright explained that the bill would authorize cities to provide for ambulance service without obtaining approval from counties. Under current law, a city may franchise, operate, or contract for ambulance service within the city only if the county in which the city is located authorizes the city to do so or if the county does not provide for ambulance service 180 days of a request from the city to do so. If a city does provide for ambulance service the county within which the city is located may preempt the city's authority to provide for ambulance service after giving the city notice of its intent to provide for ambulance service. A city that operates or contracts for ambulance services may appropriate revenues for the ambulance services and may revise schedules of rates, fees, charges, and penalties for the ambulance services.

Committee Discussion followed. Rep. Bowie wondered by the bill was needed. Rep. Wright said this bill would give cities the authority to take care of its citizens if the counties won't. Committee staff Jeff Hudson added that the Emergency Medical Services would need to sign off on the bill.

Rep. Starnes pointed out that the Association of Firefighters had requested the bill. Jim Blackmon from the Association of County Commissioners opposed the bill. Bob Bailey from the Office of Emergency Medical Services added that counties can provide services any way they wish.

David Anders from the Professional Firefighters Association confirmed that his association had requested the bill. Andy Romanoff from the League of Municipalities said his group didn't request that this bill be introduced, but that they didn't oppose it either. Mary Carnilia representing the County of Mecklenburg expressed concerns about the cost of additional paramedics.

Rep. McCombs wondered why, if neither cities nor counties wanted this bill, then why is it needed? Rep. Fox asked staff if current law provided that a county must provide services and was advised that they did not.

Reps. Wright acknowledged that there were problems in his district that this legislation would address. Reps. Bowie and Eddins said some of the same things were happening in their districts.

Rep. Haire sent forth an amendment and the amendment was adopted. Rep. Cox made a motion that the amendment and committee substitute bill be made into a new committee substitute bill, given a favorable report, unfavorable to original bill, and that the committee substitute bill be re-referred to the Committee on Finance. His motion passed.

Senate Bill 515 (Volunteer Rescue Workers) was next before the committee and Senator John Kerr, bill sponsor, was recognized to explain the bill. He said SB 515 would increase the number of paid members a rescue or rescue/emergency medical services unit may have and remain eligible to receive grants from the Volunteer Rescue/EMS Fund. Under current law, the Volunteer Rescue/EMS Fund exists to provide grants to volunteer rescue units to purchase equipment, pay highway use taxes on those purchases, and make capital improvements. The Department of Insurance makes grants to eligible rescue or rescue/EMS units on December 15 of each year. A rescue or rescue/EMS unit is eligible for a grant from the fund if it meets all of the following conditions:

- It has no more than two paid members and otherwise consists of volunteer members
- It has been recognized by the Department of Insurance as an organization that provides rescue or rescue and emergency medical services
- It satisfies the eligibility criteria established by the Department of Insurance.

Senate Bill 515 would increase the number of paid members a rescue or rescue/EMS unit may have and remain eligible to receive grants from the Fund from two paid members to ten paid members.

The Committee requested a Fiscal Impact statement. Rep. Warren wondered if the bill just includes EMS personnel and proposed an amendment to include fire departments.

Rep. Nesbitt announced that the bill would be carried over to the next meeting of the Committee and the meeting was adjourned at 10:50 a.m.

Martin Nesbitt

Rep. Martin Nesbitt, Chairman

Janette W Lee

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
June 9, 1999
10:00 a.m.
Room 1228

10:00 a.m. ***Meeting called to order and***
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 1114 Enhancing Emergency medical Services (Wright)
HB 1120 Authorize Public Hospital Debt (Wright)

SB 1004 Geologist Licensure (Kinnaird) – Sen. Kinnaird asked to hold bill
SB 979 Repeal Public Settlement Reserve Fund (Carter)
SB 515 Volunteer Rescue Workers (Kerr)

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1114

Short Title: Enhancing Emergency Medical Services. (Public)

Sponsors: Representatives Wright; and Wainwright.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES TO PROVIDE AMBULANCE SERVICE WITHOUT OBTAINING APPROVAL FROM COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-250(c) reads as rewritten:

"(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services ~~pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city to do so, provided for ambulance services within the city pursuant to this section.~~ if the city can demonstrate enhancement of public safety standards for the community and generally prevent the erosion of the quality of emergency care, a reduction in ambulance response time, an increase in the number of paramedics available, or an improvement in the manner and scope of emergency ambulance services. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, ~~the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.~~ the city may appropriate for ambulance services any revenues not otherwise limited as to use by law and may establish and from time to time revise schedules of rates, fees, charges, and penalties for ambulance services."

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

6-9-99

HOUSE BILL 1114:
Enhancing Emergency Medical Services

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Wright
Date:	June 9, 1999	**Summary by:**	Jeff Hudson,
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1114 authorizes cities to provide for ambulance service without obtaining approval from counties.

CURRENT LAW: Under current law, a city may franchise, operate, or contract for ambulance service within the city only if the county in which the city is located authorizes the city to do so or if the county does not provide for ambulance service within 180 days of a request from the city to do so. If a city does provide for ambulance service, the county within which the city is located may preempt the city's authority to provide for ambulance service after giving the city notice of its intent to provide for ambulance service. A city that operates or contracts for ambulance services may appropriate revenues for the ambulance services and may revise schedules of rates, fees, charges, and penalties for the ambulance services.

BILL ANALYSIS: House Bill 1114 provides that a city may franchise, operate, or contract for ambulance services if the city can demonstrate any one of the following:

- Enhancement of public safety standards for the community and prevent the erosion of the quality of emergency care
- A reduction in ambulance response time
- An increase in the number of paramedics available
- An improvement in the manner and scope of emergency ambulance services

House Bill 1114 also authorizes a city that franchises, operates, or contracts for ambulance services to appropriate revenues for the ambulance services and to revise schedules of rates, fees, charges, and penalties for the ambulance services.

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

6-9-99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1114
PROPOSED COMMITTEE SUBSTITUTE H1114-CSSB-001
09:24:34 EZT / 26-MAY-99

ATTENTION: Line numbers may change after adoption.

Short Title: Enhancing Emergency Medical Services. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES TO PROVIDE AMBULANCE SERVICE WITHOUT OBTAINING APPROVAL FROM COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-250 reads as rewritten:

"**§ 153A-250. Ambulance services.**

(a) A county may by ordinance franchise ambulance services provided in the county to the public at large, whether the service is based inside or outside the county. The ordinance may:

(1) Grant franchises to ambulance operators on terms set by the board of commissioners;

(2) Make it unlawful to provide ambulance services or to operate an ambulance in the county without such a franchise;

(3) Limit the number of ambulances that may be operated within the county;

(4) Limit the number of ambulances that may be operated by each franchised operator;

(5) Determine the areas of the county that may be served by each franchised operator;

(6) Establish and from time to time revise a schedule of rates, fees, and charges that may be charged by franchised operators;
(7) Set minimum limits of liability insurance for each franchised operator;
(8) Establish other necessary regulations consistent with and supplementary to any statute or any Department of Health and Human Services regulation relating to ambulance services.

Before it may adopt an ordinance pursuant to this subsection, the board of commissioners must first hold a public hearing on the need for ambulance services. The board shall cause notice of the hearing to be published once a week for two successive weeks before the hearing. After the hearing the board may adopt an ordinance if it finds that to do so is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect, and promote the public health, safety, and welfare.

If a person, firm, or corporation is providing ambulance services in a county or any portion thereof on the effective date of an ordinance adopted pursuant to this subsection, the person, firm, or corporation is entitled to a franchise to continue to serve that part of the county in which the service is being provided. The board of commissioners shall determine whether the person, firm, or corporation so entitled to a franchise is in compliance with ~~Chapter 130, Article 26;~~ Article 7 of Chapter 131E of the General Statues; and if that is the case, the board shall grant the franchise.

(b) In lieu of or in addition to adopting an ordinance pursuant to subsection (a) of this section, a county may operate or contract for ambulance services in all or a portion of the county. A county may appropriate for ambulance services any revenues not otherwise limited as to use by law, and may establish and from time to time revise schedules of rates, fees, charges, and penalties for the ambulance services. A county may operate its ambulance services as a line department or may create an ambulance commission and vest in it authority to operate the ambulance services.

(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services ~~pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city~~

~~to do so, provided for ambulance services within the city pursuant to this section.~~ if the city can demonstrate enhancement of public safety standards for the community and generally prevent the erosion of the quality of emergency care, a reduction in ambulance response time, an increase in the number of paramedics available, or an improvement in the manner and scope of emergency ambulance services. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, ~~the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.~~ the city may appropriate for ambulance services any revenues not otherwise limited as to use by law and may establish and from time to time revise schedules of rates, fees, charges, and penalties for ambulance services.

(d) A county or a city may contract with a franchised ambulance operator or with another county or city for ambulance service to be provided upon the call of a department or agency of the county or city. A county may contract with a franchised ambulance operator for transportation of indigents or persons certified by the county department of social services to be public assistance recipients.

(e) Each county or city operating ambulance services is subject to the provisions of ~~Chapter 130, Article 26 ('Regulation of Ambulance Services').~~ Article 7 of Chapter 131E of the General Statutes."

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

6-9-99

SENATE BILL 515:
Volunteer Rescue Workers

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Kerr
Date:	June 9, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 515 would increase the number of paid members a rescue or rescue/emergency medical services unit may have and remain eligible to receive grants from the Volunteer Rescue/EMS Fund.

CURRENT LAW: Under current law, the Volunteer Rescue/EMS Fund exists to provide grants to volunteer rescue units to purchase equipment, pay highway use taxes on those purchases, and make capital improvements. The Department of Insurance makes grants to eligible rescue or rescue/EMS units on December 15 of each year. A rescue or rescue/EMS unit is eligible for a grant from the Fund if it meets all of the following conditions:

- It has no more than two paid members and otherwise consists of volunteer members
- It has been recognized by the Department of Insurance as an organization that provides rescue or rescue and emergency medical services
- It satisfies the eligibility criteria established by the Department of Insurance

BILL ANALYSIS: Senate Bill 515 would increase the number of paid members a rescue or rescue/EMS unit may have and remain eligible to receive grants from the Fund from two paid members to ten paid members.

EFFECTIVE DATE: This act is effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1114

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H1114-ASB-001.01

Date 6-9-99 ,1999

Comm. Sub. [YES]
Amends Title [NO]
PCSH1114-CSSB-001 for the First Edition

Representative _____

moves to amend the bill on page 3, line 2, by inserting between the word "demonstrate" and the word "enhancement" the following:

"to the satisfaction of the Office of Emergency Medical Services in the Department of Health and Human Services that the ambulance services will result in an"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 515*

Short Title: Volunteer Rescue Workers. (Public)

Sponsors: Senators Kerr; Albertson, Harris, Hoyle, Metcalf, Perdue, Purcell, Rand, Reeves, and Weinstein.

Referred to: Finance.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE TO RECEIVE GRANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section if it meets all of the following conditions:

(1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).

(2) It has no more than ~~two~~ 10 paid members and otherwise consists of volunteer members.

(3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical services.

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

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

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 9, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Brown	State Ports
Katherine Miller	Harry Kaplan
Bob Bailey	Office of EMS - DHHS
Gordon A. Joyner	NCARKEMS
Jim Blackburn	County Commrs Assoc.
J. Craig Lunn	PCHH
Dan McLawhorn	DENR
Laura DeVivo	DENR
Mary L. Carnilia	Mecklenburg County
Pam Cowen	RPBHC
Hugh Tyson	NCHA
Joyce Peters	~~HPAssoc~~
Kelli Wellman	DuPont
Amy Fullbright	Hunton & Wms.
Andy Ellen	NCLMA
Fred Baxter	NCLMA
[illegible]	
Andy Romanet	NCLM

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
H.B. 1114 A BILL TO BE ENTITLED AN ACT AUTHORIZING CITIES TO PROVIDE AMBULANCE SERVICE WITHOUT OBTAINING APPROVAL FROM COUNTIES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ **With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.)**

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

House Committee
on
Ways and Means

Minutes
June 16, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, June 16, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Wainwright to explain **HB 985 (State Land Transactions)** which was before the committee for concurrence with two Senate amendments.

Tim Hovis explained the amendments. Members were concerned about oversight, but Rep. Owens said they needed this flexibility to compete.

Rep. Nesbitt asked if this included disposal of real and personal property. Staff advised that it included real property.

Rep. Starnes asked when not having this ability created a disadvantage for UNC. Evelyn Hawthorn, with the University, said it had happened a number of times.

Rep. Owens wanted to disagree about oversight. He asked if we had oversight on right-of-ways purchased by DOT. Rep. Nesbitt pointed out that there was a state procedure in place. Rep. Owens said if they aren't allowed to do this then they won't be able to compete with private hospitals.

Rep. Pope moved to concur with both amendments, .Rep. Starnes said he was not going to vote to concur. A voice vote was taken but the Chair was unable to determine if the motion carried. Division was called with Rep. Pope's motion passing by a 13 to 6 vote.

SB 515 (Volunteer Rescue Workers) was before the Committee. Sen. John Kerr was recognized to explain the bill.

He reminded the Committee that he had explained the bill at the last meeting but he would be glad to answer further questions if necessary.

Rep. Edith Warren moved to amend the bill to include firemen. Rep. Owens moved for adoption of her amendment and his motion passed.

Rep. Warren then moved to incorporate the amendment and bill into a committee substitute, give the committee substitute a favorable report, the original bill an unfavorable report. Her motion passed.

SB 192 (Filing of Foreign Agreements) sponsored by Senator Eric Reeves was before the Committee. **(Summary attached)**

Senator Reeves explained that the bill wold require all state agencies entering into memoranda of understanding or agreements of a noncommercial nature with foreign governments to file a copy of these documents with the Secretary of State. The bill would also authorize the Secretary of State to offer international relations assistance to other governmental agencies and units and to publish required publications electronically. The bill would also authorize the Secretary to accept contributions and grants to be spent on promoting international relations and hosting foreign dignitaries and leaders in North Carolina. Additionally the bill requires that all memoranda and understanding required to be filed under this bill be approved in advance by the Governor.

Secretary of State Elaine Marshall was recognized and asked the Committee for its support.

Upon conclusion, Rep. Pope moved to give the bill a favorable report and his motion passed.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
June 16, 1999
10:00 a.m.
Room 1228

10:00 a.m. ***Meeting called to order and***
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 985 State Land Transactions (Wainwright) FOR CONCURRENCE
HB 1120 Authorize Public Hospital Debt (Wright)
SB 192 Filing of Foreign Agreements (Reeves)
SB 290 Lobbying Law Amendments (B. Miller)
SB 1004 Geologist Licensure (Kinnaird)
SB 979 Repeal Public Settlement Reserve Fund (Carter)
SB 515 Volunteer Rescue Workers (Kerr)

ADJOURNMENT

6-16-99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 985

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H985-ARU-001

Page 1 of 1

Date 5/19, 1999

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator Kerr

moves to amend the bill on page 2, line 15, by inserting after the word "Office." the following sentence to read:
"The fact that any sale of property under this subsection shall not be subject to a reversionary interest in the State shall be expressly made known to the Joint Legislative Commission on Government Operations, and the Governor and Council of State, prior to the transaction being authorized.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED V 48-0 FAILED _____ TABLED _____

J. Pruitt 5/19/99

CHANGES TITLE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 985

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H985-ALB-1

Date 5/24/ ,1999

Comm. Sub. [YES]
Amends Title [YES]
Second Edition as amended by Amendment #1,

Senator Rand

moves to amend the bill on page 1, lines 6-7,
by rewriting those lines to read:
"THAN FAIR-MARKET VALUE, TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS, AND TO PROVIDE THAT ACQUISITIONS AND DISPOSITIONS OF REAL PROPERTY INTERESTS FOR THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM AND THE MEDICAL FACULTY PRACTICE PLAN OF THE SCHOOL OF MEDICINE OF EAST CAROLINA UNIVERSITY ARE SUBJECT TO RULES ADOPTED BY THE BOARD OF DIRECTORS OF THE HEALTH CARE SYSTEM AND THE BOARD OF TRUSTEES OF EAST CAROLINA UNIVERSITY RESPECTIVELY IN LIEU OF CERTAIN STATUTORY PROVISIONS GOVERNING STATE ACQUISITIONS AND DISPOSITIONS OF REAL PROPERTY."

on page 3, line 1,
by rewriting that line to read:
"Section 4.(a) G.S. 116-37(i) reads as rewritten:
'(i) Property. -- ~~Notwithstanding the provisions of Article 6 of Chapter 146 of the General Statutes to the contrary, the~~ The board of directors shall establish rules and regulations ~~to perform the functions otherwise prescribed for the Department of Administration in~~ for acquiring or disposing of any interest in real property for the use of the University of North Carolina Health Care System. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the University of North Carolina Health Care System. This section does not authorize the board of directors to encumber real property. The board of directors shall submit all initial policies and regulations adopted pursuant to this subsection to the State Property Office for

review upon adoption by the board. Any subsequent changes to these policies and regulations adopted by the board shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chief Executive Officer and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, the University of North Carolina Health Care System shall promptly file a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.'

Section 4.(b) G.S. 116-40.6(d) reads as rewritten:

'(d) Property. -- ~~Notwithstanding the provisions of Article 6 of Chapter 146 of the General Statutes to the contrary, the~~ The board of trustees shall establish rules and regulations ~~to perform the functions otherwise prescribed for the Department of Administration in~~ for acquiring or disposing of any interest in real property for the use of the Medical Faculty Practice Plan. These rules and regulations shall include provisions for development of specifications, advertisement, and negotiations with owners for acquisition by purchase, gift, lease, or rental, but not by condemnation or exercise of eminent domain, on behalf of the Medical Faculty Practice Plan. This section does not authorize the board of trustees to encumber real property. Such rules and regulations shall be implemented by a property office maintained by East Carolina University. The board of trustees shall submit all initial rules and regulations adopted pursuant to this subsection to the State Property Office for review upon adoption. Any subsequent changes to these rules and regulations shall be submitted to the State Property Office for review. Any comments by the State Property Office shall be submitted to the Chancellor of East Carolina University and to the President of The University of North Carolina. After review by the Attorney General as to form and after the consummation of any such acquisition, East Carolina University shall promptly file, on behalf of the Medical Faculty Practice Plan, a report concerning the acquisition or disposition with the Governor and Council of State. Acquisitions and dispositions of any interest in real property pursuant to this section shall not be subject to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 985

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H985-ALB-1

the provisions of Article 36 of Chapter 143 of the General Statutes or the provisions of Chapter 146 of the General Statutes.'

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

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ 47-0 FAILED _____ TABLED _____

D. Pruitt 5/20/99

CHANGES TITLE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 985
Committee Substitute Favorable 4/27/99

Short Title: State Land Transactions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-25.1(a) reads as rewritten:

"(a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed ~~twelve thousand dollars ($12,000)~~ twenty-five thousand dollars ($25,000) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies."

Section 2. G.S. 146-29.1(c) reads as rewritten:

"(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society ~~upon a determination by~~ if the Department of Administration ~~that such~~ determines both of the following:

(1) The transaction is in consideration of public service rendered or to be ~~rendered.~~ rendered by the nonprofit.

(2) The property will be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business, as defined in section 513 of the Code. For the purposes of this subdivision, the term "Code" has the same meaning as in G.S. 105-228.90.

The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. ~~In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.~~"

Section 3. G.S. 146-32 reads as rewritten:

"**§ 146-32. Exemptions as to leases, etc.**

The Governor, acting with the approval of the Council of State, may adopt rules and regulations.

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:

a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property; ~~or~~

b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six ~~months.~~ months; or

c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location."

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

6-16-99

Janette Lee (Rep. Nesbitt)

From: Hawthorne, Evelyn [Evelyn@athena.dev.unc.edu]
Sent: Wednesday, June 16, 1999 7:06 AM
To: Rep. Martin Nesbitt; Rep. William Wainwright
: Sen. Tony Rand; Norma Mills (Pres Pro Tem's Office); Rep. Joe Hackney; Susan Ehringhaus (E-mail); Jeffrey Houpt (E-mail); Clifton Metcalf (E-mail); James B. Milliken (E-mail)
ubject: Amendment 2 to HB 985, scheduled for hearing today

Thank you very much for scheduling HB 985 for consideration by the Ways and Means Committee today. I understand from reviewing the House Calendar late yesterday that the bill was calendared for hearing today.

I understand that the two Senate amendments would be the topic of discussion by the committee. I have provided some information that I offer for your use to explain Senate amendment 2, offered by Sen. Tony Rand and adopted by the Senate. It relates to UNC Hospitals and to ECU's medical practices. You can see that the amendment is fairly technical, in response to an opinion by the Attorney General.

I would be pleased to discuss this with you prior to the committee meeting. If there is anything else I can do to be of assistance, please let me know by calling me via my pager - 216-9885. Like most folks, I'll likely be in the Senate Appropriations Committee Meeting today, but will be in attendance at the Ways and Means Committee.

Thanks very much for your kind consideration in this regard. I look forward to seeing you later today.

Explanation of Amendment 2 to HB 985
In 1998, the General Assembly approved provisions that granted flexibility in personnel and purchasing practices and property disposition to the UNC Hospitals and to ECU's medical practices management. The intent was to provide them with the tools they need to [redacted] competitive in the changing healthcare market, thus preserving the [redacted]e's investments.

The General Assembly attempted to provide flexibility in property transactions and dispositions in part by streamlining the cumbersome review process required by the Council of State. That process was often very time consuming, causing a chilling effect on potential property purchasers or lessors. To enable the flexibility, but at the same time maintaining government oversight, the 1998 provisions addressed the need for government oversight through involvement by the procedures of the Department of Administration. The notion was to streamline the process. That change was the subject of an opinion by the Attorney General, who in March of 1999 stated that the phrasing of the provisions requiring oversight by the Department of Adminstration merely inserted another step in the process. The unintended consequence resulted in maintenance of approval by the Council of State. The opinion determined that perfecting language addressing that problem would be required if land or property transactions were to be streamlined as intended by the General Assembly.

Sen. Rand's amendment, drafted by Gerry Cohen, is the effort to do that. The provision applies to the UNC Hospitals and to the ECU Medical Practices. There is no known opposition to the provision.

Evelyn Hawthorne
Associate Vice Chancellor for Government Relations
The University of North Carolina at Chapel Hill
CB 6100, 600 NationsBank Plaza
Chapel Hill, NC 27599-6100
919.962.1560 fax 919.962.2387 pager 919.216.9885
[redacted]lyn_hawthorne@unc.edu

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 515*

Short Title: Volunteer Rescue Workers. (Public)

Sponsors: Senators Kerr; Albertson, Harris, Hoyle, Metcalf, Perdue, Purcell, Rand, Reeves, and Weinstein.

Referred to: Finance.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE TO RECEIVE GRANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section if it meets all of the following conditions:

(1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).

(2) It has no more than ~~two~~ 10 paid members and otherwise consists of volunteer members.

(3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical services.

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 515 Volunteer Rescue Workers

SHORT TITLE: Volunteer Rescue Workers

SPONSOR(S): Senator John Kerr

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund	**(minimal loss - $3750 or less – per year)**				
Highway Trust Fund	**(minimal loss - $1250 or less – per year)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Volunteer Rescue Units, Highway Fund, and the Highway Trust Fund.

EFFECTIVE DATE: October 1, 1999.

BILL SUMMARY: G.S. 58-87-5 established a special non-reverting Volunteer Rescue/EMS Fund. This fund provides grants to volunteer rescue units to purchase equipment and make capital improvements. In order to qualify for the grants the rescue unit must meet a number of eligibility criteria. One of those requirements is that the rescue or rescue/EMS unit has no more than two paid employees. This bill increases the limit on the number of employees to ten.

ASSUMPTIONS AND METHODOLOGY: In 1998 the Department of Insurance received 170 grant applications for the Volunteer Rescue/EMS fund. The total amount requested was $1,262,637.39. At that time $1,028,135.16 was available to fund those requests. The Department approved 148 applications and distributed $1,025,033.99. The remaining balance of $3,101.17 will be rolled over into the 1999 availability. Funding decisions are made on the basis of need. The Department uses 2% of the fund balance to cover administrative costs.

The bill does not change the amount of grant money available to rescue and rescue/EMS units. It simply increases the number of units that are eligible to compete for the funds. Therefore, the bill will not have a direct fiscal impact on the Volunteer Rescue/EMS fund.

The bill will have a small fiscal impact on motor fuel tax revenue. Under G.S. 105-449.106, volunteer rescue squads can apply for a quarterly refund of the taxes they pay on motor fuels. The Department of Revenue uses the definition of "volunteer rescue" in G.S. 58-87-5 to determine which organizations qualify for the motor fuel tax refund. The bill expands that definition. According to the North Carolina Association of Rescue and EMS, there are approximately 400 volunteer rescue and EMS units that meet the existing grant requirements. The Association believes the bill will increase the number of eligible organizations to 445. As a result, 45 additional units will be eligible for the motor fuels tax refund.

In FY 1997-98 the Department of Revenue refunded $41,579.81 in motor fuels taxes to volunteer rescue units. The Department can not estimate the number and value of the additional refunds. However, they do not believe the additional refunds will amount to more than $5000.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington 

DATE: April 6, 1999Thursday, April 08, 1999

SENATE BILL 515:
Volunteer Rescue Workers

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Kerr
Date:	June 9, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 515 would increase the number of paid members a rescue or rescue/emergency medical services unit may have and remain eligible to receive grants from the Volunteer Rescue/EMS Fund.

CURRENT LAW: Under current law, the Volunteer Rescue/EMS Fund exists to provide grants to volunteer rescue units to purchase equipment, pay highway use taxes on those purchases, and make capital improvements. The Department of Insurance makes grants to eligible rescue or rescue/EMS units on December 15 of each year. A rescue or rescue/EMS unit is eligible for a grant from the Fund if it meets all of the following conditions:

- It has no more than two paid members and otherwise consists of volunteer members
- It has been recognized by the Department of Insurance as an organization that provides rescue or rescue and emergency medical services
- It satisfies the eligibility criteria established by the Department of Insurance

BILL ANALYSIS: Senate Bill 515 would increase the number of paid members a rescue or rescue/EMS unit may have and remain eligible to receive grants from the Fund from two paid members to ten paid members.

EFFECTIVE DATE: This act is effective October 1, 1999.

6/16/99

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 515

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

S515-ASB-001.01

Date_____,1999

Comm. Sub. [NO]
Amends Title [YES]
FIRST EDITION

Representative _____

moves to amend the bill on page 1, lines 2 and 3, by rewriting those lines to read:

"AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A FIRE DEPARTMENT MAY HAVE AND REMAIN ELIGIBLE TO RECEIVE GRANTS FROM THE VOLUNTEER FIRE DEPARTMENT FUND AND TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE AND REMAIN ELIGIBLE TO RECEIVE GRANTS FROM THE VOLUNTEER RESCUE/EMS FUND."; and

on page 1, between lines 4 and 5, by inserting between those lines:

"Section 1. G.S. 58-87-1(b) reads as rewritten:

'(b) A fire department is eligible for a grant under this section if it meets all of the following conditions:

(1) It serves a response area of 6,000 or less in population.

(2) It has no more than ~~two~~ 10 paid members and otherwise consists of volunteer members.

(3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), the Department shall use the most recent annual population estimates certified by the State Planning Officer.'"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 515

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

S515-ASB-001.01

1 by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 192:
Filing of Foreign Agreements

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Reeves
		Summary by:	Tim Hovis Committee Counsel
Date:	June 16, 1999		
Version:	Third Edition		

SUMMARY: ***Senate Bill 192 would require all State agencies entering into memoranda of understanding or agreements of a noncommercial nature with foreign governments to file a copy of these documents with the Secretary of State. The bill would also authorize the Secretary of State to offer international relations assistance to other governmental agencies and units and to publish required publications electronically. The bill would authorize the Secretary to accept contributions and grants to be spent on promoting international relations and hosting foreign dignitaries and leaders in North Carolina. Additionally the bill requires that all memoranda and understanding required to be filed under this bill be approved in advance by the Governor.***

CURRENT LAW: Under current law, memoranda of understanding and agreements entered by the State with foreign governments are kept by the agency executing the document on behalf of the State, and copies are not indexed or kept in any central location within State government.

BILL ANALYSIS: Section 1 of the proposed committee substitute for Senate Bill 192 would create a new Article in Chapter 66 to require that a copy of all executed memoranda of understanding and agreements of a noncommercial nature that are considered public documents under the public records law, entered into between the State, or an State agency, and a foreign government, be filed by the State agency with the Secretary of State. This section makes it clear that the failure to properly file a copy of the document with the Secretary of State does not affect the legal validity of the document. The Secretary is to index the filing and copies of the document will be available to the public as a public record. This section also defines what is a foreign government for purposes of this law. It also specifies that public education institutions are not state agencies for purposes of this section as it relates to their educational, research, or extension activities.

Section 2 amends the Secretary of State's publications requirements to permit the Secretary to publish electronically any information required to be published.

Section 3 adds a new section to the authority and responsibilities of the Secretary of State to authorize the Secretary to offer assistance in matters of international relations and protocol to other governmental agencies and units of the State when requested and when resources are available to provide this assistance. This section also allows the Secretary to accept contributions and grants and to spend these funds for the purpose of promoting international relations and for hosting foreign dignitaries and leaders while in North Carolina. These funds and their expenditure will be subject to audit and the Executive Budget Act.

Section 4 amends the Governor's powers and duties to require that the Governor preapprove, after review by the Attorney General, all memoranda of understanding between the State and foreign governments that are required to be filed by this bill.

Section 5 directs the Secretary of State to report to GovOps by March 31, 2000 on information related to the existence of these types of agreements.

EFFECTIVE DATE: The bill would become effective July 1, 1999 and would apply to memoranda and agreements executed on or after that date.

This summary was contributed to by Mr. Walker Reagan, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 192
Commerce Committee Substitute Adopted 4/7/99
Third Edition Engrossed 4/8/99

Short Title: Filing of Foreign Agreements. (Public)

Sponsors:

Referred to:

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FILING WITH THE SECRETARY OF STATE OF ALL MEMORANDA OF UNDERSTANDING AND AGREEMENTS OF A NONCOMMERCIAL NATURE BETWEEN THE STATE OF NORTH CAROLINA AND FOREIGN GOVERNMENTS, TO AUTHORIZE THE SECRETARY OF STATE TO PROVIDE INTERNATIONAL RELATIONS ASSISTANCE AND TO PUBLISH PUBLICATIONS ELECTRONICALLY, AND TO PROVIDE FOR GUBERNATORIAL OVERSIGHT OF AGREEMENTS INVOLVING THE STATE AND FOREIGN GOVERNMENTS.

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 35.

"Agreements Between North Carolina and Foreign Governments.

"**§ 66-275. Agreements between North Carolina and foreign governments to be filed.**

(a) A copy of all executed memoranda of understanding and agreements of a noncommercial nature otherwise subject to disclosure under the public record laws of this State, entered into by the State of North Carolina, or any agency of the State, and a foreign government shall be filed by the State agency with the Secretary of State.

(b) Notwithstanding subsection (a) of this section, the validity or enforceability of any memoranda or agreement subject to this section shall not be affected by the

failure to comply with subsection (a) of this section. Documents required to be filed with the Secretary of State under this section shall be indexed and made available to the public in accordance with Chapter 132 of the General Statutes.

(c) For purposes of this section, 'foreign government' means a foreign country's government that is recognized and accredited by the United States Department of State, and includes governmental subdivisions of that country. For purposes of this section, 'agency of the State' does not include public educational institutions with respect to their educational, research, or extension activities."

Section 2. G.S. 147-54.1 reads as rewritten:

"**§ 147-54.1. Division of Publications; duties.**

The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the Director of Publications. This Division shall publish the North Carolina Manual, Directory, Index of Local Legislation and such other publications as may be useful to the members and committees of the General Assembly and other officials of the State and of the various counties and cities. Unless otherwise required by law, the Secretary may publish electronically information permitted or required by this section. The Secretary may sell these publications at such prices as ~~he~~ the Secretary deems reasonable; the proceeds of sale shall be paid into the State treasury.

The Division shall also perform all such other duties as may be assigned by the Secretary of State."

Section 3. Article 4 of Chapter 147 is amended by adding a new section to read:

"**§ 147-54.5. International relations assistance.**

(a) The Secretary of State may offer direct and indirect assistance in matters relating to international relations and protocol to other governmental agencies and units of the State of North Carolina. The assistance may be provided upon request of the intended recipient when resources are available for these purposes.

(b) The Secretary of State, on behalf of the State, may accept gifts, donations, bequests, or other forms of voluntary contributions, apply for grants from public and private sources, and may expend funds received under this subsection for the purpose of promoting international relations and hosting foreign dignitaries and leaders in North Carolina. All funds and gifts received pursuant to this subsection shall be subject to audit by the Office of the State Auditor and all funds shall be expended in conformity with the Executive Budget Act and shall become the property of the State."

Section 4. G.S. 147-12 reads as rewritten:

"**§ 147-12. Powers and duties of Governor.**

In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) ~~He is to~~ To supervise the official conduct of all executive and ministerial officers; and when ~~he shall deem~~ the Governor deems it advisable ~~he shall~~ to visit all State institutions for the purpose of inquiring into the management and needs of the same.

(2) ~~He is to~~ To see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) ~~He is to~~ To make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, ~~he~~ the Governor may also appoint to fill any vacancy occurring in that office, and the person ~~he~~ the Governor appoints shall serve for the unexpired term of the office and until ~~his~~ the person's successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of ~~his~~ the office,

b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead ~~he~~ the person acts,

b. Upon the return of the officer in whose stead ~~he~~ the person acts, or

c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as ~~he~~ the Governor deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of ~~his~~ the office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor. Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission.

(3a) ~~The Governor may~~ To make appointments to fill vacancies in offices subject to appointment by the General Assembly as provided in G.S. 120-122.

(3b) Whenever a statute calls for the Governor to appoint one person from each congressional district to a board or commission, and at the time of enactment of that statute, the gubernatorial appointments do not cover all of the congressional districts, then the Governor, in filling vacancies on that board or commission as they occur, shall make appointments to satisfy that requirement, but shall not be required to remove any person from office to satisfy the requirement.

(3c) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the General Assembly, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives by May 15 of the year in which the appointment is to be made of the name of the person ~~he~~ the Governor is submitting to the General Assembly for confirmation.

(3d) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the Senate, the Governor shall notify the President of the Senate by May 15 of the year in which the appointment is to be made of the name of the person ~~he~~ the Governor is submitting to the General Assembly for confirmation.

(4) ~~He is~~ To be the sole official organ between the government of this State and other states, or the government of the United States.

(5) ~~He has~~ To have the custody of the great seal of the State.

(6) If ~~he be~~ the Governor is apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prizefighting is about to be violated, ~~he~~ the Governor shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) **(Repealed effective July 1, 1999)** He shall annually appoint eight members to the board of directors of the North Carolina Railroad, who shall serve for one year until the next annual meeting of stockholders held for the purpose of electing or naming directors.

(8) In carrying out ~~his~~ ex officio duties, ~~he is authorized~~ to designate ~~his~~ the Governor's personal representative to attend meetings and to act in ~~his~~ the Governor's behalf as ~~he~~ the Governor directs.

(9) ~~He is authorized to~~ To appoint such personal staff as ~~he~~ the Governor deems necessary to carry out effectively the responsibilities of ~~his~~ the Governor's office.

(10) ~~He is hereby empowered to~~ To contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, ~~he~~ the Governor shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto.

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-4.01, 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.

(12) To name and locate State government buildings, monuments, memorials, and improvements, as provided by G.S. 143B-373(1).

(13) To oversee and approve all memoranda of understanding and agreements between the State and foreign governments, as defined in G.S. 66-275(c), and international organizations. Any memoranda of understanding or agreements under this subsection to be signed on behalf of the State must first be approved by the Governor after review by the Attorney General, and after execution filed with the Secretary of State in accordance with G.S. 66-275."

Section 5. Within available appropriated funds, the Secretary of State shall provide information related to the existence of memoranda of understanding and agreements between state agencies and foreign governments obtained pursuant to this act to the Joint Committee on Governmental Operations by March 31, 2000.

Section 6. This act becomes effective July 1, 1999, and applies to memoranda and agreements executed on or after that date.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☒ Committee Substitute for
H.B. 985 A BILL TO BE ENTITLED AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☒ **With recommendation that the House concur.**

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
SB 515 A BILL TO BE ENTITLED AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE TO RECEIVE GRANTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill ☒ which changes the title, unfavorable as to Senate bill.**

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☒ Committee Substitute for
SB 192 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FILING WITH THE SECRETARY OF STATE OF ALL MEMORANDA OF UNDERSTANDING AND AGREEMENTS OF A NONCOMMERCIAL NATURE BETWEEN THE STATE OF NORTH CAROLINA AND FOREIGN GOVERNMENTS, TO AUTHORIZE THE SECRETARY OF STATE TO PROVIDE INTERNATIONAL RELATIONS ASSISTANCE AND TO PUBLISH PUBLICATIONS ELECTRONICALLY, AND TO PROVIDE FOR GUBERNATORIAL OVERSIGHT OF AGREEMENTS INVOLVING THE STATE AND FOREIGN GOVERNMENTS.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 16, 1999**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Edwards	Sec of State
~~Alicia Shea~~	~~Sec of State~~
PAMELA DAVISON	NORTH TRADE CENTER
Byron Smith	TBSAF
Corby A. Joyner	NCARCEMS
Buddy White	NCARCEMS
Paul Miller	NCSFA
Rodney Maddox	Sec of St
Stanley Gordon	DENR/DLR
Jerry Carter	NC Bd. of Engineers & Surveyors
N. S. Tutt	" " " "
Mary Deaton	Capital Group
Claire F. Marshall	SOS
Bernard Allen	SOS
June Lal. Michaux	SPO
Joe Henderson	SPO
Alice Garland	Electric Cities
John Phelps	NCLM
Catherine Davis	Electric Cities
Ruth Camp	WTCNC
Bill Scott IV	NCBA
[illegible]	NC Bar Association
Robt. Upton	N/C Bd Lic of Geol.
G. DAVID GARRETT	NC BOARD FOR LIC. OF GEOLOGISTS
Judith Rossie	Jamesville, N.C.
Ed Rego	N.C.A.C.C.
Stephanie Mann	NCAR

House Committee
on
Ways and Means

Minutes
June 23, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, June 23, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Rep. Thomas Wright to explain **HB 1120 (Authorize Public Hospital Debt).** He presented a proposed committee substitute to the committee and Rep. Haire moved for its adoption. The motion passed.

Rep. Wright said the bill authorizes nonprofit corporations or associations operating a public hospital to engage in installment purchase financing and to issue revenue anticipation bonds. **(See attached Summary)**

Rep. Nesbitt asked what additional financing tools this bill would allow. Staff advised that it would allow a non-profit to do this type of financing with approval of the city and county. A public hospital can already do this if it is owned by a city, county hospital district or hospital authority. Public Hospital can already do revenue anticipation notes.

Hugh Tilson, general counsel, with the North Carolina Hospital Association, said this bill shifts who would be arranging the financing. Currently, a non-profit corporation would have to go to the county and have the county to arrange financing. This bill will allow hospital to do this itself, with approval of the county.

Jim Blackburn with the County Commissioners Association said they were comfortable with this bill.

Rep. Jarrell commented that this is a departure for public financing and she was concerned about oversight. Staff advised that the non-profit or hospital would need prior approval of the city, county and the Local Government Commission.

Rep. Bowie moved to give the committee substitute a favorable report, unfavorable to original bill and to re-refer the bill to the Committee on Finance. Her motion passed.

SB 290 (Lobbying Law Amendments) was before the committee. Senator Brad Miller was recognized to explain the bill.

He said the bill would amend GS 120-47 to increase the late filing fee for the failure of a lobbyist or a lobbyist principal to file a lobbying expense report from $10 to $10 per day for the first 30 days the report is late and $50 per day thereafter, not to exceed a total of $1,000. It also increased the violation of lobbying laws from a Class 1 misdemeanor to a Class A1 misdemeanor.

Upon conclusion of his remarks, Secretary of State Elaine Marshall was recognized. She said this is a real problem for her office, that a large number of lobbyists violate this requirement and if the penalty were increased, it would be an incentive for lobbying to comply.

Rep. Buchanan moved for a favorable and to re-refer the bill to the Committee on Finance.

Rep. Nesbitt was concerned about the penalty clause, does it apply to refusing to file or to a violation of this provision? Staff said it does include willful violation of any of the filing articles. Rep. Nesbitt moved to amend the bill to delete the provision that changed the violation from a Class 1 misdemeanor to a Class A1 misdemeanor and his motion passed.

Rep. Buchanan changed his motion to incorporate the amendment and the original bill into a committee substitute, give the committee substitute a favorable report, unfavorable to original bill and to re-refer the bill to the Committee on Finance.

SB 796 (General Contractor's Property) was before the committee and Senator David Hoyle was recognized to explain the bill.

He said he introduced the bill for the State Licensing Board for General Contractors. The bill would allow them to do the following:

- Purchase or rent equipment and supplies
- Purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees
- Acquire and encumber real property, subject to the approval of the Governor and the Council of State. If the Board encumbers the property, the only collateral it can pledge is its own assets, income, and revenues. At least three other licensing boards (Medical Board, Board of CPA Examiners, and the State Bar) already have this authority.

Rep. Blue wondered why they were prohibited from owning property in the first place.

Rep. Cox made a motion to give the bill a favorable report and to re-refer the bill to the Committee of Finance. His motion passed.

SB 1004 (Geologist Licensure) was before the committee and SenatorEllieKinnaird was recognized to explain the bill.

She said it authorizes the State Board for licensing of Geologists to conduct confidential investigations of acts that may violate the Board's statutes, rules, or code of professional conduct. It also expands the grounds for which the Board may refuse to grant to renew a license and authorizes the Board to levy civil penalties of up to $5,000.

The bill also authorizes the Board to employ investigators to inquire into any acts committed in the State that may violate Chapter 89E, the Board code of professional conduct, or the Board's rules. A Board member who gives testimony during an investigation may not later participate in any decision involving punitive action as a result of the investigation. Board investigations are confidential until the Board takes disciplinary action against a licensee or corporate registrant. Any information collected and compiled by the Board and admitted into evidence in a hearing before the Board is consider a public record.

The Chairman was concerned that a Board member was going to participate in investigations.

State Geologist Charles Gardner was recognized and made clarifying comments.

Senator Kinnaird said this bill parallels the Engineering statute.

Rep. Blue had concerns about the disciplinary procedure and wondered why this change was being made. He made a motion to amend the bill.

The bill was carried over.

The committee adjourned at 10:55 a.m.

Rep. Martin Nesbitt, Chairman

Janette W. Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1120*

Short Title: Authorize Public Hospital Debt. (Public)

Sponsors: Representative Wright.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(h) As used in this section, the term 'unit of local government' means any of the following:

. . .

(12) A public hospital, as defined in G.S. 159-39."

Section 2. G.S. 160A-20 is amended by adding a new subsection to read:

"(e1) A contract entered into under this section by a public hospital owned by a county or city is subject to approval by the county or city that owns the hospital. The county or city may withhold its approval only if it determines that the contract would adversely affect its credit worthiness, would violate an existing bond order or covenant, or would adversely affect an anticipated bond issuance."

Section 3. G.S. 159-170 reads as rewritten:

"**§ 159-170. Revenue anticipation notes.**

(a) Authorization; Term. -- A unit of local government or a public hospital, as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in

evidence thereof. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. -- No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing ~~unit,~~ unit or public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit ~~and~~ or public hospital and, in the case of revenue anticipation notes issued by a unit of local government or by a public hospital operated by a unit of local government, that the faith and credit of the issuing unit or the unit that operates the public hospital are not pledged for the payment of the ~~note, and~~ note. Each revenue anticipation note shall also bear on its face or reverse the following certificate signed by the finance officer: 'This note and all other revenue anticipation notes of ~~(issuing unit)~~ (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date.' No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. -- Revenue anticipation notes issued under this section shall be special obligations of the issuing ~~unit.~~ unit or public hospital. Neither the credit nor the taxing power of the issuing ~~unit~~ unit, in the case of revenue anticipation notes issued by a unit of local government or by a public hospital operated by a unit of local government, may be pledged for the payment of revenue anticipation ~~notes, and no~~ notes. No holder of a revenue anticipation note issued by a unit of local government or by a public hospital operated by a unit of local government shall have the right to compel the exercise of the taxing power by the issuing unit or the unit that operates the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Approval of Certain Public Hospital Notes. -- A public hospital that operates a hospital facility owned by a unit of local government may not issue revenue anticipation notes without first obtaining the approval of the unit that owns the facility. The unit of local government may withhold this approval only if it determines that the issuance of the notes would adversely affect its credit worthiness, would violate an existing bond order or covenant, or would adversely affect a planned bond issuance."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1120-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1120
THIS IS A DRAFT 2-JUN-99 09:06:39
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Authorize Public Hospital Debt. (Public)

Sponsors:

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(h) As used in this section, the term 'unit of local government' means any of the following:

. . .

(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39."

Section 2. G.S. 160A-20 is amended by adding a new subsection to read:

"(el) A nonprofit corporation or association operating or leasing a public hospital may only enter into a contract pursuant to this section if the nonprofit corporation or association will have an ownership interest in the property being financed, including a leasehold interest, and the security interest granted in such property being financed shall only be to the extent of

such property interest. In addition, any contract entered into by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority which owns such hospital. Approval of the city, county, hospital district or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

Section 3. G.S. 159-170 reads as rewritten:

"**§ 159-170. Revenue anticipation notes.**

(a) Authorization; Term. -- A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S.159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the noted as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. -- No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing ~~unit,~~ unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be

realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit ~~and~~ or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the ~~note, and~~ note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: 'This note and all other revenue anticipation notes of ~~(issuing unit)~~ (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date.' No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. -- Revenue anticipation notes issued under this section shall be special obligations of the issuing ~~unit.~~ unit or the nonprofit corporation or association operating or leasing a public hospital. Neither the credit nor the taxing power of the issuing ~~unit~~ unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation ~~notes, and no~~ notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case or revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital.Approval of the city, county, hospital district or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

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

HOUSE BILL 1120:
Authorize Public Hospital Debt

BILL ANALYSIS

Committee:	House Ways & Means	**Introduced by:**	Rep. Wright
Date:	April 22, 1999	**Summary by:**	Cindy Avrette and Tim Hovis, Staff Attorneys
Version:	1st Edition		

SUMMARY: House Bill 1120 authorizes nonprofit corporations or associations operating a public hospital to engage in installment purchase financing and to issue revenue anticipation bonds. The bill becomes effective when it becomes law.

CURRENT LAW: A public hospital is a hospital that meets one of the following conditions:

- Is operated by a county, city, hospital district, or hospital authority.
- Is owned by a county, city, hospital district, or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority.
- Is a hospital on whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations.

A public hospital has exclusive control of its own budgeting and accounting, without supervision from the county, city, or the Local Government Commission (LGC). However, financing capital debt is more restricted. Public hospitals may issue revenue bonds, subject to the approval and conditions of the LGC. Counties and cities may issue general obligation bonds to provide hospital facilities and services.

BILL ANALYSIS: **House Bill 1120** authorizes two additional forms of capital financing for public hospitals: installment purchase financing and revenue anticipation bonds.

Sections 1 and 2 of the bill expand the use of installment purchase financing to nonprofit corporations or associations operating public hospitals. The nonprofit public hospitals hope that installment financing will enable them to respond more rapidly to their capital financing needs, such as equipment, land, and facilities. Section 1 expands the definition of "unit of local government" to include " a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39." As a unit of local government, a nonprofit corporation or association operating a public hospital will be able to finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the person or entity financing the purchase. One type of installment financing is a certificate of participation. A certificate of participation is similar to a bond, but is less costly than holding a bond referendum and issuing bonds.

Section 2 requires the county, city, or hospital district or authority that owns the hospital to approve of any installment financing contract that the nonprofit corporation or association signs. The county, city, district or authority must approve the contract unless it determines that the contract (1) would cause the city, county, district or authority to breach an existing financing instrument; (2) would restrict their ability

to incur bank eligible indebtedness under federal tax laws; or (3) would have an adverse impact on their credit ratings or interfere with an anticipated financing.

Section 3 would allow a nonprofit corporation or association operating a public hospital to issue revenue anticipation bonds. A revenue anticipation bond would allow the nonprofit to borrow money to pay expenses in the current fiscal year, to be repaid from the receipt of nontax revenues to be collected later in the fiscal year. The nonprofit corporation or association may not issue revenue anticipation bonds unless the local government unit that owns the facility approves the issuance. The unit of local government must approve the bond issuance unless it determines that the bond (1) would cause the city, county, district or authority to breach an existing financing instrument; (2) would restrict their ability to incur bank eligible indebtedness under federal tax laws; or (3) would have an adverse impact on their credit ratings or interfere with an anticipated financing. The nonprofit public hospitals desire this legislation as a means of obtaining a line of credit from financial institutions to secure a means of revenue in case insurers or the hospital cannot process claims in the year 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1120*

Short Title: Authorize Public Hospital Debt. (Public)

Sponsors: Representative Wright.

Referred to: Ways and Means.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(h) As used in this section, the term 'unit of local government' means any of the following:

. . .

(12) A public hospital, as defined in G.S. 159-39."

Section 2. G.S. 160A-20 is amended by adding a new subsection to read:

"(e1) A contract entered into under this section by a public hospital owned by a county or city is subject to approval by the county or city that owns the hospital. The county or city may withhold its approval only if it determines that the contract would adversely affect its credit worthiness, would violate an existing bond order or covenant, or would adversely affect an anticipated bond issuance."

Section 3. G.S. 159-170 reads as rewritten:

"**§ 159-170. Revenue anticipation notes.**

(a) Authorization; Term. -- A unit of local government or a public hospital, as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in

evidence thereof. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. -- No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing ~~unit,~~ unit or public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit ~~and~~ or public hospital and, in the case of revenue anticipation notes issued by a unit of local government or by a public hospital operated by a unit of local government, that the faith and credit of the issuing unit or the unit that operates the public hospital are not pledged for the payment of the ~~note, and~~ note. Each revenue anticipation note shall also bear on its face or reverse the following certificate signed by the finance officer: 'This note and all other revenue anticipation notes of ~~(issuing unit)~~ (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date.' No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. -- Revenue anticipation notes issued under this section shall be special obligations of the issuing ~~unit.~~ unit or public hospital. Neither the credit nor the taxing power of the issuing ~~unit~~ unit, in the case of revenue anticipation notes issued by a unit of local government or by a public hospital operated by a unit of local government, may be pledged for the payment of revenue anticipation ~~notes, and no~~ notes. No holder of a revenue anticipation note issued by a unit of local government or by a public hospital operated by a unit of local government shall have the right to compel the exercise of the taxing power by the issuing unit or the unit that operates the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Approval of Certain Public Hospital Notes. -- A public hospital that operates a hospital facility owned by a unit of local government may not issue revenue anticipation notes without first obtaining the approval of the unit that owns the facility. The unit of local government may withhold this approval only if it determines that the issuance of the notes would adversely affect its credit worthiness, would violate an existing bond order or covenant, or would adversely affect a planned bond issuance."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 290

Short Title: Lobbying Law Amendments. (Public)

Sponsors: Senators Miller; Gulley, Harris, Kinnaird, Lucas, Metcalf, Reeves, Shaw of Cumberland, and Weinstein.

Referred to: Judiciary II.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty

dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

Whoever willfully violates any provision of this Article shall be guilty of a Class ~~1~~ A1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction."

Section 4. This act becomes effective January 1, 2000, and Section 3 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 6-23-99

S. B. No. 290 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Nesbitt

moves to amend the bill on page 2, line s 5-10

( ) WHICH CHANGES THE TITLE

by deleting those lines;

and on page 2, lines 11-12

by rewriting the lines to read:

"Section 3. This act becomes effective January 1, 2000."

SIGNED Martin Nesbitt

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 796

Short Title: General Contractors Property. (Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO OWN REAL PROPERTY AND TO PURCHASE EQUIPMENT AND LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-9.1. Ownership of real property; equipment; liability insurance.**

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

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

6/23/99

SENATE BILL 796:
General Contractor's Property

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Hoyle
		Summary by:	Tim Hovis Committee Counsel
Date:	June 23, 1999		
Version:	First Edition		

Senate Bill 796 authorizes the State Licensing Board for General Contractors to do the following:

- Purchase or rent equipment and supplies
- Purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees
- Acquire and encumber real property, subject to the approval of the Governor and the Council of State. If the Board encumbers the property, the only collateral it can pledge is its own assets, income, and revenues. At least three other licensing boards (Medical Board, Board of CPA Examiners, and the State Bar) already have this authority.

This bill would take effect when it becomes law.

This summary was contributed to by Mr. Linwood Jones, Staff Attorney.

SENATE BILL 1004:
Geologist Licensure

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Kinnaird
Date:	June 2, 1999	**Summary by:**	Jeff Hudson,
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1004 authorizes the State Board for Licensing of Geologists to conduct confidential investigations of acts that may violate the Board's statutes, rules, or code of professional conduct. The bill also expands the grounds for which the Board may refuse to grant or renew a license and authorizes the Board to levy civil penalties of up to $5,000.***

CURRENT LAW: Chapter 89E of the General Statutes, the North Carolina Geologists Licensing Act, is administered by the North Carolina Board for Licensing of Geologists. The Board consists of five members (an academic geologist, a salaried company geologist, an independent or consultant geologist, a representative from the mining industry, and a consumer or lay member) appointed by the Governor. Chapter 89E also describes the functions and duties of the Board, the minimum qualifications for licensure, unlawful acts, and disciplinary procedures.

Under the current Chapter 89E, the Board may refuse to grant or to renew, may suspend, or may revoke the license of any person who:

- Has violated Chapter 89E or the Board's rules
- Has been convicted of a misdemeanor under Chapter 89E
- Has been convicted of a felony
- Is found by the Board to be guilty of gross unprofessional conduct, dishonest practice or incompetence, or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.

BILL ANALYSIS: Senate Bill 1004 authorizes the Board to employ investigators to inquire into any acts committed in the State that may violate Chapter 89E, the Board's code of professional conduct, or the Board's rules. A Board member who gives testimony during an investigation may not later participate in any decision involving punitive action as a result of the investigation. Board investigations are confidential until the Board takes disciplinary action against a licensee or corporate registrant. Any information collected and compiled by the Board and admitted into evidence in a hearing before the Board is considered a public record.

Martha Walston, Fiscal Research Division, contributed to the preparation of this summary.

Senate Bill 1004 also amends the disciplinary procedures section of Chapter 89E to:

- Authorize the Board to refuse to grant a license to any applicant who does not meet the qualifications of Chapter 89E, the Board's code of professional conduct, or the Board's rules. The Board may also deny a license to any corporate registrant that does not meet these qualifications or the requirements of Chapter 55B, the Professional Corporation Act.
- Expand the grounds on which the Board may refuse to renew, may suspend, or may revoke a license to include:
    - Violation of the Board's code of professional conduct or an order issued by the Board
    - Conviction of **any** misdemeanor
- Authorize the Board to require a licensee found to be professionally incompetent to take an oral or written exam or to meet other requirements to demonstrate the licensee's fitness to practice geology. The Board may suspend the license until the licensee demonstrates professional competence.
- Authorize the Board to levy a civil penalty not to exceed $5,000 for violations of Chapter 89E, the Board's code of professional conduct, the Board's rules or any order issued by the Board.
- Authorize the Board to bring a civil action in superior court to recover a civil penalty.

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

Martha Walston, Fiscal Research Division, contributed to the preparation of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1004
Finance Committee Substitute Adopted 4/28/99

Short Title: Geologist Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"**§ 89E-17. ~~Complaints.~~ Complaints and investigations.**

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The Board may expend funds for salaries, fees, and per diem expenses in connection with an investigation conducted pursuant to this Chapter, but no funds other than per diem expenses shall be paid to a member of the Board in connection with an investigation. No member of the Board may give testimony during an investigation and thereafter participate in matters that may directly involve punitive action against a licensee or corporate registrant as a result of the investigation.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"**§ 89E-19. Disciplinary procedures.**

~~The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.~~

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

(1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.

(2) Has been convicted of a misdemeanor.

(3) Has been convicted of a felony.

(4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.

(5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars ($5,000) for

any licensee or corporate registrant who violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or any order issued by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before assessing a civil penalty, the Board shall consider the following:

(1) The nature, gravity, and persistence of the violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.

(3) Whether the violation was willful.

(4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

(1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.

(2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 1004 Amendment No. _____

(to be filled in by Principal Clerk)

(Rep.) Blue

Sen.)

moves to amend the bill on page 2, line 31,

by rewriting that line to read:

"(2) Has been convicted of a misdemeanor under this Chapter."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
H.B. 1120 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ **With a favorable report as to committee substitute bill , unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.)**

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
SB 290 A BILL TO BE ENTITLED AN ACT TO AMEND THE LOBBYING LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ **With a favorable report as to committee substitute bill , unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.)**

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
SB 796 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO OWN REAL PROPERTY AND TO PURCHASE EQUIPMENT AND LIABILITY INSURANCE.

☐ With a favorable report.

☒ **With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE** ☒

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

Ways & Means [redacted] 6-23-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Charles Gardner	NC DENR - Land Resources Div.
2. Mary Kelly	SOS
3. [illegible]	NAACP
4. DAVID GARRETT	NC BOARD FOR LICENSING OF GEOLOGISTS
5. Alan Miles	Bell & Dixon LLP
6. HUGH TILSON	NCHA
7. Carol Love	Common Cause
8. Tommy Worth	Carolinas Healthcare System
9. [illegible]	NCFPC
10. Bob Hall	Democracy South
11. [illegible]	SOS
12. Claire F. Marshall	SOS
13. [illegible]	NC BOARD FOR GEN CONTRACTORS
14. [illegible]	NCSA
15. Mike Carpenter	NCHBA
16. [illegible]	SOS
17. Jim Blackburn	NCACC
18. Patricia Rawlings	NCACC
19. [illegible]	NC Forestry Assn.
20. [illegible]	ACLU
21. [illegible]	ACLU

VISITOR REGISTRATION SHEET

Ways & Means 6-23-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Mark Season	Capital Group
2.	Catherine Lowe	ElectriCities of NC
3.	H. McBride	NCP
4.	Seb Allen	ZDAPA
5.	William Reist	Golf
6.	Sarah Hamilton	Citizen
7.	Dorothy Reist	CITIZEN
8.	John Ramsey Jr	Poyner & Spruill
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House Committee
on
Ways and Means

Minutes
June 30, 1999

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, June 30, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Senator Kinnaird to continue her explanation of **SB 1004 (Geologist Licensure).** A proposed committee substitute was distributed to the members and Rep. Decker moved for its adoption. The motion passed.

Staff explained the changes in the bill as a result of amendments from the June 23rd meeting.

Rep. Bowie moved to give the committee substitute a favorable report, unfavorable to the original bill. The motion passed.

SB 212 (Mortuary Science Changes) was before the committee and Senator Tony Rand was recognized to explain the bill.

He said that the bill would establish procedures for insurance companies to purchase the assets of or merge with burial associations. The bill provides conditions whereby an association may increase their assessments and the procedures the associations must follow to effect such an increase. Also, the bill would allow surface burial vaults under certain circumstances.

Discussion followed. Rep. Michaux moved to amend the bill but later withdrew his motion.

Rep. Bowie moved to give the bill a favorable report and her motion passed.

SB 776 (Remove sunset/Purchasing Exemptions) was before the committee and Senator Rand was recognized to explain the bill.

He said the bill would remove the July 1, 1999 sunset on the law that exempts the North Carolina State Ports Authority, the North Carolina Seafood Industrial Park Authority, and Davie County from certain State purchase and contract requirements.

Committee discussion followed. Several members were concerned about oversight and the continuing need for these exemptions.

Rep. Haire moved to amend the bill and his amendment was adopted.

The Chairman sent the bill to a subcommittee and appointed Rep. Haire, Chairman, and Rep. Michaux and Rep. Bowie as members.

The meeting adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
June 30, 1999
10:00 a.m.
Room 1228

10:00 a.m. Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

SB 212 Mortuary Science Changes ***(Rand)***
SB 255 State Agency Telephone Menus ***(Albertson)***
SB 370 OSHA Witness Statements ***(Ballance)***
SB 776 Remove Sunset/Purchasing Exemptions ***(Rand)***
SB 1004 Geologist Licensure ***(Kinnaird)***

ADJOURNMENT

6/30/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1004
Finance Committee Substitute Adopted 4/28/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1004-CSSB-001
17:08:15 EZT / 29-JUN-99

ATTENTION: Line numbers may change after adoption.

Short Title: Geologist Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"§ 89E-17. ~~Complaints.~~ Complaints and investigations.

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The

Board may expend funds for salaries and fees in connection with an investigation conducted pursuant to this Chapter.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"§ 89E-19. Disciplinary procedures.

~~The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.~~

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

(1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.

(2) Has been convicted of a misdemeanor under G.S. 89E-22.

(3) Has been convicted of a felony.

(4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.

(5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars ($5,000) for any licensee or corporate registrant who violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or any order issued by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before assessing a civil penalty, the Board shall consider the following:

(1) The nature, gravity, and persistence of the violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.

(3) Whether the violation was willful.

(4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

(1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.

(2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 212
Commerce Committee Substitute Adopted 4/21/99
Third Edition Engrossed 4/27/99

Short Title: Mortuary Science Changes. (Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS, AND MINIMUM BURIAL DEPTHS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-472.2 reads as rewritten:

"**§ 143B-472.2. Duties of Board; meetings.**

It shall be the duty of the North Carolina Board of Mortuary Science to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules adopted pursuant to this Article; to ~~assist the Board of Mortuary Science with prosecution of~~ prosecute violations of this Article or rules adopted pursuant thereto; and to protect the interest of members of mutual burial associations.

The North Carolina Board of Mortuary Science, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Board is authorized and directed to adopt specific rules to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such

rules shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules adopted by the Board pursuant to this Article.

All rules heretofore adopted by the North Carolina Mutual Burial Association Commission or the North Carolina Board of Mortuary Science in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the North Carolina Board of Mortuary Science as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

Members of the Board shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Board shall be entitled to actual expenses when attending regular or special meetings of the Board held other than in Raleigh. All expenses of the Board shall be paid from funds coming to the Board pursuant to this Article or appropriated for this purpose."

Section 2. Article 10 of G.S. 143B-472.3 reads as rewritten:

"Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits."

Section 3. Part 13 of Article 10 of Chapter 143B is amended by adding the following new section:

"**§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial associations.**

(a) Any insurance company which desires to purchase the assets of or to merge with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of Mortuary Science and to the secretary of the association a written proposal containing the terms and conditions of the proposed purchase or merger. A proposal may be conditioned upon an increase in the assessments of an association in the manner set out in subsection (g) of this section. In such a case, the issues of purchase or merger and an increase in assessments may be considered at the same meeting of the association.

(b) Upon receipt of a written proposal:

(1) The Board shall issue an order directing the association to hold a meeting of the membership within 30 days following receipt of the order for the purpose of voting on the proposal.

(2) Within 10 days of receiving the order from the Board, the association shall give at least 10 days' written notice of the meeting to each of its members. The notice shall:

a. State the date, time, and place of the meeting.

b. State the purpose of the meeting.

c. Contain or have attached the proposal submitted by the insurance company.

d. Contain a statement limiting the time that each member will be permitted to speak to the proposal, if the association deems it advisable.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members present and voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars ($21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

(1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.

(2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.

(3) No vote may be had on the question of an increase in assessments unless a quorum of the members of the association is present at the meeting. A quorum shall be conclusively presumed if 15 members or ten percent (10%) of the membership of the association, whichever is greater, is present at the meeting.

(4) The proposal to increase the assessments shall be approved by an affirmative vote of a majority of the members present and voting.

(5) The secretary of the association within five days following the meeting shall certify the result of the vote and the presence of a quorum to the Board in the manner and for the purposes set out in subsections (e) and (f) of this section.

(h) Upon a written request from an association that has held a valid meeting and voted for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall issue an order of liquidation for that association.

(i) Upon receipt of a request for voluntary dissolution under subsection (h), the Board shall issue an order of liquidation. The Board's order may direct that the agreements for members' benefits be transferred to a financially sound mutual burial association, as well as all records, property, and unexpended balances of funds of the association to be liquidated, if the financially sound mutual burial association agrees

in writing to accept the transfer. The Board's order shall direct the burial association to complete the liquidation and to file a final report with the Board no later than December 31 of the year of the liquidation. Upon receipt of the order of liquidation, the burial association shall:

(1) Cease accepting new members.

(2) Collect all debts owed to the association and pay all debts owed by the association from monies on hand, including the reserve.

(3) Distribute pro rata any remaining monies on hand and in the reserve among those who were members of the association and whose transfer could not be accomplished on the date that the liquidation order was issued by the Board. Each member's distributive share shall be determined by dividing the amount of the member's benefit by the aggregate benefits of all members of the association and then multiplying the total amount of money available for distribution by the percentage so derived. Assessments owed by the members to the association at the time of distribution shall be taken into account and shall be offset against the members' distributive shares.

(4) Issue a certificate to members in an amount that equals the difference between the distributive share issued in subdivision (3) of this subsection and the full amount of the member's association benefit. Any certificate issued shall supersede and supplant any other certificate already issued by the association. The certificate shall be on a form prescribed by the Board and shall be prepared and distributed by the association at its expense.

(5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 143B-472.6 are automatically cancelled."

Section 4. G.S. 90-210.25A reads as rewritten:

"**§ 90-210.25A. Minimum burial depth.**

When final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement shall be a minimum of 18 inches below the ground surface. This section does not apply ~~to burials where no part of the burial vault or other encasement containing the body is touching the ground.~~ to:

(1) Burials where no part of the burial vault or other encasement containing the body is touching the ground.

(2) Burials where the land is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981."

Section 5. The Legislative Research Commission is authorized to study issues relating to the insolvency of mutual burial associations in North Carolina. The Commission shall make a final report of its findings and recommendations, including any legislative proposals, to the 2001 General Assembly. The Commission may make an interim report to the 1999 General Assembly, 2000 Regular Session.

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

6-30-99

SENATE BILL 212:
Mortuary Science Changes.

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Rand
		Summary by:	Tim Hovis Committee Counsel
Date:	April 27, 1999		
Version:	Third Edition		

SUMMARY: Senate Bill 212 establishes procedures for insurance companies to purchase the assets of or merge with burial associations. The bill provides conditions whereby an association may increase their assessments and the procedures the associations must follow to effect such an increase. Finally, the bill would allow surface burial vaults under certain circumstances

BILL ANALYSIS:

Section 1. Includes technical changes to G.S. 143B-472.2 that are necessary due to the 1987 abolition of the North Carolina Mutual Burial Association Commission.

Section 2. Makes a technical change to 143B-472.3.

Asset Purchase or Merger.

Section 3. Part 13 of Article 10 of Chapter 143B is amended by adding a new section (G.S. 143B-472.29). Under current law, insurance companies may purchase the assets of or merge with burial associations (G.S. 143B-472.28). The proposed new section, G.S. 143B-472.29, provides guidelines for such an asset purchase or merger. The guidelines include:

- Insurance companies desiring to purchase the assets of or merge with a burial association must submit to the Board of Mortuary Science and to the secretary of the burial association a written proposal of the proposed purchase or merger.
- The association must meet regarding the proposal and a representative of the insurance company shall be permitted to explain the proposal at this meeting.
- The Board shall review the procedures of the meeting (which are specified in this section of the bill), and, in the event that a purchase or merger was approved at the association's meeting, shall issue an order approving of the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

Increase in Assessments.

An association may increase its assessments if the association's current assessments are unlikely to be, within the next three years,:

- Adequate to reach or maintain a reserve of at least $21.00 per member, or

- Adequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association.

The bill provides requirements for the association to meet regarding an assessment increase.

Voluntary Dissolution of an Association.

The Board will issue an order of liquidation where an association has voted for voluntary dissolution.

The liquidation order may include:

- The Board may direct that the agreements for members' benefits, as well as the association's record's, property, and unexpended balances of funds to be liquidated be transferred to a financially sound association with the financially sound association's approval.
- The liquidations must be complete and a final report filed with the Board no later than December 31 of the year of liquidation.
- Upon receipt of the order of liquidation, the association must follow various requirements. If the association's assets and funds could not be transferred to a financially sound association, the remaining funds are distributed to the association's membership. The certificate would be in an amount equalling the difference between the amount distributed and the full amount of the member's benefit. The certificate can be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees to accept such certificates.

Surface Burial Vaults Allowed under Certain Circumstances.

Section 4. Amends G.S. 90-210.25A. Under current law, deceased persons not buried in a mausoleum must be buried 18 inches below the ground surface. This section would allow an individual to be buried in a surface burial vault where the land to be used for the burial is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981.

Section 5. Authorizes the Legislative Research Commission to study the insolvency of mutual burial associations.

This act is effective when it becomes law.

This summary was contributed to by Ms. Esther Manheimer, Staff Attorney.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 212 Amendment No. _____

(to be filled in by Principal Clerk)

Rep.) Michaux

Sen.)

moves to amend the bill on page 6, line 14,

by inserting between the word "relating" and the word "to" the word "only"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 776

Short Title: Remove Sunset/Purchasing Exemptions. (Public)

Sponsors: Senator Rand.

Referred to: Finance.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE LAW EXEMPTING CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of S.L. 1997-331 reads as rewritten:

"Section 4. This act is effective when it becomes ~~law and expires July 1, 1999.~~ law."

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

6-30-99

SENATE BILL 776:
Remove Sunset/Purchasing Exemptions

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Rand
Date:	June 30, 1999	**Summary by:**	Martha Walston, Jeff Hudson, Staff Attornies
Version:	First Edition		

SUMMARY: ***Senate Bill 776 removes the July 1, 1999 sunset on the law that exempts the North Carolina State Ports Authority, the North Carolina Seafood Industrial Park Authority, and Davie County from certain State purchase and contract requirements.***

CURRENT LAW: S.L. 1997-331 exempts the North Carolina State Ports Authority from certain State purchase and contract requirements only if the Authority finds that the delivery of a particular port facility must be expedited for good cause. The Authority must first give the Secretary of Administration written notice of its intent to exercise the exemption. This notice must set out the requirements to be exempted, the reason the exemption is necessary, and the way the Authority anticipates the exemption will expedite the delivery of the port facility. The Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any building contracts exceeding $250,000 to which an exemption applied. S.L.1997-331 exempts the State Ports Authority from:

- G.S. 133-1.1(g), which requires that facility plans and specifications include the color schedule.
- G.S. 143-128(a) through (e), which governs when separate bids for building projects are required
- G.S. 143-132, which governs the minimum number of competitive bids for public contracts
- G.S. 143-135.26, which sets out the powers and duties of the State Building Commission

S.L. 1997-331 exempts the North Carolina Seafood Industrial Park Authority from:

- Article 3 of Chapter 143, which governs State purchases and contracts, including the requirement to promote contracts with small, minority, physically handicapped and women contractors for supplies and services.
- Article 8 of Chapter 143, which sets out the requirements for public contracts.
- G.S. 143-341(3), which directs the Department of Administration to examine and approve construction plans and specification.

With regard to the first two exemptions, the Seafood Industrial Park Authority must exercise the powers and duties set out in Article 3 and Article 8. The Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding $250,000 to which an exemption applied.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-30-99

S. B. No. 776 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Haire

1 moves to amend the bill on page 1, line s 7-8

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

4

5 "Section 4. This act is effective when it becomes

6 ~~law and expires July 1, 1999.~~ law. Section 3 of

7 this act expires July 1, 1999."

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SIGNED Thurgood Haire

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☒ Committee Substitute for
S.B. 1004 A BILL TO BE ENTITLED AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill** , ☐ which changes the title, **unfavorable as to Senate committee substitute bill.**

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

4/24/97

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☒ Committee Substitute for
S.B. 212 A BILL TO BE ENTITLED AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS, AND MINIMUM BURIAL DEPTHS.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

4/24/97

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 30, 1999**
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel O. Bullock	State Construction Office
Andy Ritter	NC Mort. Sci. Board
MICHAEL WEISEL	ALLEN + PINNIX
Jim Blackburn	Assoc. of County Commissioners
Ethel Hege	DMV-1100 New Bern Ave.
Elaine Patterson	Asst. Comm. DMV
Matt Osborne	AOC
Alice Garland	Electricities
Kari Carstens	SLC
Kim Hibbard	NCLM
Katherine Davis	Electricities
Tim Brown	State Ports -
[illegible]	NCDOC
R Webb Corbett RN	ECU-SON
Charley Gardner	EHNR-DLR
Mark Landis	Bd Lic of Geologists
JOHN [illegible]	PSC
Henry Jones	Attorney - Raleigh
David Andrews	PFPark
Paul Williams	NCMBA
James Andrews	NC AFL-CIO
John Mag	NC CWA Council
Charlie Dell	NC Outdoor Advertising Assoc.
LUCIUS PULLEN	Attorney
Milly Ann	N State AFLCIO
Milton Lewis	Disputes Settlement Center of Durham
LISA REYES	THE INSIDER
[illegible]	NCBA

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes

6/30/99

immediately after Session

Room 1425

The House Committee on Ways and Means met in Room 1425 of the legislative Building. The meeting was called to order at 4:53 p.m. by Martin L. Nesbitt, Chairman.

Senator Ballance was recognized to explain **SB 370 (OSHA Witness Statements)**. A copy of the bill explanation is attached as **Attachment I.**

Upon conclusion, Rep. Michaux moved for a favorable report and the motion passed.

SB 255 (State Agency Telephone Menus) was before the committee. A committee substitute was distributed to the Committee for adoption and Jeff Hudson, Staff to the Committee, explained the bill. A copy of the Bill Digest is attached as **Attachment II.**

Rep. Haire was concerned that the bill would greatly increase the cost of letterhead used by State agencies.

The bill was removed from consideration and the meeting adjourned at 5:05 p.m.

Rep. Martin Nesbitt, Chairman

Janette W. Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 370
Judiciary I Committee Substitute Adopted 4/22/99

Short Title: OSHA Witness Statements. (Public)

Sponsors:

Referred to:

March 15, 1999

A BILL TO BE ENTITLED

AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-136(e) reads as rewritten:

"(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are ~~pending.~~ pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations."

Section 2. G.S. 95-136(e1) reads as rewritten:

"(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any

employer or third ~~party.~~ party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of the witness statements the Commissioner intends to use at the enforcement hearing or the statements of witnesses the Commissioner intends to call to testify, provided a written request for the statement is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties."

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

Attachment I 6-30-99

SENATE BILL 370:
OSHA Witness Statements

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Ballance
		Summary by:	Tim Hovis Committee Counsel
Date:	June 30, 1999		
Version:	Second Edition		

SUMMARY: ***Senate Bill 370 would amend the OSHA law to permit employers charged with OSHA violation to obtain copies of inspection reports and witness statements in various forms at various times in the enforcement hearing process.***

CURRENT LAW: Current law closes all OSHA investigative records and reports while the investigations and proceedings are pending. Current law provides that the names of witnesses and witnesses' statements shall not be released to any employer or third party, without a signed release by the person whose statement is sought.

BILL ANALYSIS: Senate Bill 370 would permit an employer who has been cited for OSHA violations to get a copy of the official inspection report. The names and identities of the witnesses must be redacted from the report. The employer is also entitled to transcriptions of handwritten witness statements. However, these statements must be transcribed at the expense of the requesting party so that information naming or otherwise identifying the witness is not released.

Upon request immediately prior to an enforcement hearing, the Commissioner of Labor shall furnish unredacted witness statements to the employer.

Section 1 of the bill authorizes the Commissioner to give to a cited employer a copy of the official inspection report that serves as the basis for the OSHA violation citation.

Section 2 provides that upon the request and at the expense of the requesting party, the Commissioner shall furnish copies of the official inspection reports with the names and identities of the witnesses redacted. Upon request and payment, a person may obtain transcriptions of handwritten witness statements with the witness's identity redacted.

This section also requires the Commissioner to furnish to the employer copies of unredacted witness statements 10 days prior to an enforcement hearing for all witnesses the Commissioner plans to use in the hearing if requested at least 12 days prior to the hearing. Requests made within less than 12 days prior to the hearing shall be made available as soon as practicable.

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

This summary was contributed to by Mr. Walker Reagan, Staff Attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 255
Judiciary I Committee Substitute Adopted 3/29/99
Third Edition Engrossed 4/1/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S255-CSSB-001
16:50:20 EZT / 29-JUN-99

ATTENTION: Line numbers may change after adoption.

Short Title: State Agency Telephone Menus. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS, TO REQUIRE ALL STATE AGENCIES TO INCLUDE THE AGENCY TELEPHONE NUMBER ON AGENCY LETTERHEAD, AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-351 reads as rewritten:

"Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator after accessing not more than two menus during normal business hours. As used in this section, the term "menu" refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of

whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State."

Section 2. All State agencies shall include the agency's telephone number or numbers in a prominent place on all agency letterhead. The telephone number or numbers included on the letterhead shall in all cases include the number at which the sender of the letterhead may be reached.

Section 3. Each State agency shall report in writing to the General Assembly by October 1, 1999, on that agency's compliance with the provisions of S.L. 1997-351, as amended by Section 1 of this act, and with the provisions of Section 2 of this act. Each report shall be submitted to the Joint Legislative Commission on Governmental Operations. The report shall specifically state whether that agency's telephone system and letterhead is in compliance with the provisions of this act and, if not, shall state any reasons for that noncompliance. The report shall also provide information on the volume of calls received by that agency and the number of attendants or operators available to take those calls.

Section 4. This act is effective when it becomes law. Section 2 of this act applies to all letterhead purchased or produced on or after September 1, 1999.

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **WAYS AND MEANS.**

☒ Committee Substitute for
S.B. 370 A BILL TO BE ENTITLED AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

4/24/97

Attachment II

6-30-99

SENATE BILL 255:
State Agency Telephone Menus

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senators Albertson and Martin of Pitt
Date:	June 30, 1999		
Version:	Third Edition	**Summary by:**	Jeff Hudson, Committee Counsel

SUMMARY: ***Senate Bill 255 requires State agencies to reprogram their telephone systems so that during normal business hours a caller can reach an operator after accessing no more than two telephone menus. Senate Bill 255 also requires State agencies to include their telephone numbers in a prominent place on all agency letterhead.***

CURRENT LAW: The telephone systems of all State agencies are currently required to be programmed to minimize the number of menus that a caller must go through to reach a desired extension and to allow a caller to reach an operator during normal business hours. The current law does not define the term "menu." Current law also does not specify that a State agency must place its telephone number in the agency's letterhead.

BACKGROUND: Although all State agencies were required to reprogram their telephone systems by September 1, 1997, there was apparently some misunderstanding concerning what the General Assembly meant by the term "menu." There are some agencies that have not met the legislative intent of the current law because these agencies do not consider "routers" to be the same as a menu. Routers are used to send or route a call to a particular menu. Therefore, a person could go through several routers before reaching a menu that would allow a caller to speak with an attendant or operator.

Senate Bill 255 was amended on the floor of the Senate by Senator Foxx to add a provision that requires State agencies to include their telephone numbers in a prominent place on all agency letterhead.

BILL ANALYSIS: Senate Bill 255 requires State agencies to reprogram their telephone systems so that during normal business hours a caller can reach an operator after accessing no more than two telephone menus. Senate Bill 255 defines "menu" to mean the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term. Senate Bill 255 also requires State agencies to include their telephone numbers in a prominent place on all agency letterhead. State agencies must report to the Joint Legislative Commission on Governmental Operations on their compliance with the provisions of Senate Bill 255 by May 1, 1999.

EFFECTIVE DATE: This act is effective when it becomes law. The provision requiring agencies to include their telephone numbers in agency letterhead applies to letterhead purchased or produced on or after the date the act becomes law.

Jo B. McCants, Research Division, contributed to the preparation of this summary.

VISITOR REGISTRATION SHEET

House Ways and Means Committee *After Session* **June 30, 1999**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Ed Dean	N.C.A.C.C.
Jim Brown	State Ports
Don Williams	CCPS
Mary Carmichael	Mecklenburg County
Lisa Reyes	THE INSIGHT
Dan Mirsky	Bailey & Dixon LLP

HOUSE COMMITTEE
ON
WAYS AND MEANS

Minutes

Immediately after session

July 1, 1999

The House Committee on Ways and Means met immediately after Session on July 1, 1999 in Room 1228 of the Legislative Building, Raleigh, NC

Rep. Martin L. Nesbitt, Chairman, called the meeting to order.

A committee substitute for **SB 255 (State Agency Telephone Menus)** (Adopted 6/30/99) was before the Committee. Rep. Nesbitt continued to explain the bill for the bill sponsor, Senator Albertson.

Rep. Haire moved to amend the bill and his motion passed. He then moved to incorporate the amendment and the committee substitute into a new committee substitute, give that bill a favorable report, the original bill and unfavorable report. The motion passed.

SB 877 (Workers' Comp/National/State Guard) was before the committee. Rep. Nesbitt explained the bill for Sen. Kerr who was unable to attend the meeting.

Rep. Haired moved to give the bill a favorable report and the motion passed.

The meeting adjourned at 4:40 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
July 1, 1999
Immediately after Session
Room 1228

Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

SB 255 State Agency Telephone Menus ***(Albertson)*** *Committee Substitute distributed for adoption 6/30/99.*

SB 776 Remove Sunset/Purchasing Exemptions ***(Rand)*** *(Subcommittee Appointed 6/30/99)*

SB 877 Workers' Comp/National/State Guard ***(Kerr)***

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 255
Judiciary I Committee Substitute Adopted 3/29/99
Third Edition Engrossed 4/1/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S255-CSSB-001
16:50:20 EZT / 29-JUN-99

ATTENTION: Line numbers may change after adoption.

Short Title: State Agency Telephone Menus. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS, TO REQUIRE ALL STATE AGENCIES TO INCLUDE THE AGENCY TELEPHONE NUMBER ON AGENCY LETTERHEAD, AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-351 reads as rewritten:

"Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator after accessing not more than two menus during normal business hours. As used in this section, the term "menu" refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of

whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State."

Section 2. All State agencies shall include the agency's telephone number or numbers in a prominent place on all agency letterhead. The telephone number or numbers included on the letterhead shall in all cases include the number at which the sender of the letterhead may be reached.

Section 3. Each State agency shall report in writing to the General Assembly by October 1, 1999, on that agency's compliance with the provisions of S.L. 1997-351, as amended by Section 1 of this act, and with the provisions of Section 2 of this act. Each report shall be submitted to the Joint Legislative Commission on Governmental Operations. The report shall specifically state whether that agency's telephone system and letterhead is in compliance with the provisions of this act and, if not, shall state any reasons for that noncompliance. The report shall also provide information on the volume of calls received by that agency and the number of attendants or operators available to take those calls.

Section 4. This act is effective when it becomes law. Section 2 of this act applies to all letterhead purchased or produced on or after September 1, 1999.

SENATE BILL 255:
State Agency Telephone Menus

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senators Albertson and Martin of Pitt
Date:	June 30, 1999		
Version:	Third Edition	**Summary by:**	Jeff Hudson, Committee Counsel

SUMMARY: Senate Bill 255 requires State agencies to reprogram their telephone systems so that during normal business hours a caller can reach an operator after accessing no more than two telephone menus. Senate Bill 255 also requires State agencies to include their telephone numbers in a prominent place on all agency letterhead.

CURRENT LAW: The telephone systems of all State agencies are currently required to be programmed to minimize the number of menus that a caller must go through to reach a desired extension and to allow a caller to reach an operator during normal business hours. The current law does not define the term "menu." Current law also does not specify that a State agency must place its telephone number in the agency's letterhead.

BACKGROUND: Although all State agencies were required to reprogram their telephone systems by September 1, 1997, there was apparently some misunderstanding concerning what the General Assembly meant by the term "menu." There are some agencies that have not met the legislative intent of the current law because these agencies do not consider "routers" to be the same as a menu. Routers are used to send or route a call to a particular menu. Therefore, a person could go through several routers before reaching a menu that would allow a caller to speak with an attendant or operator.

Senate Bill 255 was amended on the floor of the Senate by Senator Foxx to add a provision that requires State agencies to include their telephone numbers in a prominent place on all agency letterhead.

BILL ANALYSIS: Senate Bill 255 requires State agencies to reprogram their telephone systems so that during normal business hours a caller can reach an operator after accessing no more than two telephone menus. Senate Bill 255 defines "menu" to mean the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term. Senate Bill 255 also requires State agencies to include their telephone numbers in a prominent place on all agency letterhead. State agencies must report to the Joint Legislative Commission on Governmental Operations on their compliance with the provisions of Senate Bill 255 by May 1, 1999.

EFFECTIVE DATE: This act is effective when it becomes law. The provision requiring agencies to include their telephone numbers in agency letterhead applies to letterhead purchased or produced on or after the date the act becomes law.

Jo B. McCants, Research Division, contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 255

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

S255-ASB-001.01

Date_____,1999

Comm. Sub. [YES]
Amends Title [NO]
THIRD EDITION S255-CSSB-001

Representative Haire

moves to amend the bill on page 2, lines 7 through 9, by rewriting those lines to read:

"agency letterhead."

SIGNED Thierry Haire
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 877
Judiciary II Committee Substitute Adopted 4/22/99

Short Title: Workers' Comp. for National/State Guard. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national ~~guard, except when called into the service of the United States,~~ guard while on State active duty

under orders of the Governor and members of the North Carolina State ~~guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty~~ guard while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the

United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

Section 2. This act is effective when it becomes law and applies to claims for injuries or deaths occurring on or after that date.

SENATE BILL 877:
Worker's Comp. for National/State Guard

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Kerr
Date:	June 30, 1999	**Summary by:**	Tim Hovis and Brenda J. Carter, Staff Attorneys
Version:	Second Edition		

SUMMARY: Senate Bill 877 clarifies when members of the N. C. National Guard and the N.C. State Guard are employees subject to the Workers' Compensation Act.

CURRENT LAW: The North Carolina Workers' Compensation Act provides for the compensation for personal injury or death by accident arising out of and in the course of an individual's employment. For purposes of determining who is covered by the act, specific terms are defined – including 'employee'. The term currently includes members of the North Carolina National Guard, except when called into the service of the United States, and members of the North Carolina State Guard. Members of both organizations are entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor.

BILL ANALYSIS: Senate Bill 877 amends the definition of 'employee' under the North Carolina Worker's Compensation Act to include members of the North Carolina National Guard and members of the North Carolina State Guard *while on State active duty under orders of the Governor.*

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

S877-SMRV-001

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☒ Committee Substitute for
S.B. 255 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THAT LAW, AND TO REQUIRE ALL STATE AGENCIES TO INCLUDE THE AGENCY TELEPHONE NUMBER ON AGENCY LETTERHEAD.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.**

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☒ Committee Substitute for
S.B. 877 A BILL TO BE ENTITLED AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee *After Session* **July 1, 1999**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine Parkinson	DMV Asst. Comm 1100 New Bern Ave
Ethel Teer	DMV 1100 New Bern Ave.
John Phelps	NCLM
Ed Regan	N.C. Assoc. of Co. Comm.
LISA REYES	THE INSIDER
David Bullock	SCO

House Committee
on
Ways and Means

Minutes
July 7, 1999

The House Committee on Ways and Means met at 12:00 noon on Thursday, June 8, 1999 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and asked for a subcommittee report on **SB 776.** Staff advised that it was not ready.

SB 966 (Building Inspection Contracts) was before the committee and Senator Clodfelter was recognized to explain the bill.

He presented a proposed committee substitute to the committee and Rep. Buchanan moved for its adoption. The Motion passed.

Sen. Clodfelter said it was hard for Mecklenburg County to keep up with new construction and sometimes when growth is rapid it is impossible for the staff to keep up with inspections. He said counties and cities already have statutory authority to contract with private parties for building inspections.

He said the bill does the following:

- Allows cities and counties to hire companies to do building inspections.
- Gives cities and counties discretion to determine when an inspector has a conflict of interest.
- Requires cities and counties to find that a conflict of interest exists when the individual hire to perform the inspection:
    1. Worked for the owner, developer, or project manager within the last 2; years.
    2. Is closely related to the owner, developer, or project manager;
    3. Has a financial interest in the property being inspected.

Upon conclusion of his remarks, Rep. Jarrell said she comes from a city that has a staff of building inspectors and wondered if it weren't more expensive to contract with private parties. She wondered how much of this was going on.

Jim Bartles, Director of Code Enforcement in Mecklenburg County, was called upon to answer. He said the bill was all about options. In 1997 Mecklenburg County had 290,000 inspections, in 1998 293,000 and in 1999 thus far, the estimates are for 260,000 inspections.

Discussion followed. Rep. Pope moved to amend the bill and his motion passed. Rep. McCombs moved to incorporate the amendment and the committee substitute into a new committee substitute, give that bill a favorable report, unfavorable to senate committee substitute bill. The motion passed.

SB 532 (Asheville Civil Service Board) was before the committee. Rep. Nesbitt asked Rep. Mickey Michaux to chair while he explained the bill to the members.

Rep. Nesbitt explained that this bill started out as a bill to amend the civil service law in Asheville, but a committee substitute had been drafted to have the bill to include a request by the Buncombe County Commissioners to allow a non-binding vote on zoning in the county.

Senator Carter was recognized. He said this was a request of the county commissioners.

Rep. Buchanan moved to adopt the committee substitute and his motion passed.

Rep. Haire wondered why it was necessary to pass a bill to allow Buncombe County to have a non-binding vote.

Rep. Nesbitt responded that their commissioners started out in a process doing a land-use plan for the county that involved letting different areas in the county vote on whether or not they would adopt it. Somewhere along the way, they determined that that process was unlawful, that it could not be done in that manner. Suddenly, they had to tell everyone that they wouldn't be allowed to vote. Then the commissioners decided they would do a land-use plan that is not really zoning, that would just be voluntary. Somewhere along the process, the commissioners decided not to do that, that they wanted to go with a more comprehensive plan. Buncombe county citizens felt like they had been misled because they wouldn't be allowed to vote. The commissioners met last Friday and voted to request this bill. He said what this provision does is what the commissioners asked for it.

Rep. Pope questioned whether this would cost the state and Rep. Nesbitt said it would be at the expense of the county.

Rep. Nesbitt moved to amend the bill to delete the part that added Polk County. His motion passed.

Rep. Buchanan moved to incorporate the amendment and bill into a new committee substitute, to give that committee substitute a favorable report, original bill and unfavorable report.

Reps. Cansler, Sherrill and Walend were present and Rep. Sherrill was recognized to speak. She said the people in Buncombe felt betrayed. She said she and hundreds constituents that she had heard from would prefer that the vote be binding. She did not feel that the people in the City of Asheville should get to vote on the zoning of the county. Rep. Walend agreed, as did Rep. Cansler.

Senator Steve Metcalf was recognized and he said he supported the bill and thought that it carried out the request of the County Commissioners.

Rep. Nesbitt asked Reps. Cansler, Sherrill, and Walend if they wanted the bill to go forward. They said they felt like this was being rushed through. Rep. Cansler said he wanted to bill to go forward.

Rep. Buchanan's motion was before the committee and passed.

There being no further business, the meeting adjourned at 1:20 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

7/7/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 966
State and Local Government Committee Substitute Adopted 4/27/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S966-CSSB-001
15:18:42 EZT / 6-JUL-99

ATTENTION: Line numbers may change after adoption.

Short Title: Building Inspection Contracts. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE AUTHORITY TO ENTER INTO CONTRACTS FOR CONDUCTING MUNICIPAL AND COUNTY BUILDING INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-353 reads as rewritten:

"**§ 153A-353. Joint inspection department; other arrangements.**

A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or ~~city, or may~~ city. A county may also contract with an individual who is not a city or county employee but who holds one of the applicable

certificates as provided in G.S. 153A-351.1 or ~~G.S. 160A-411.1.~~ G.S. 160A-411.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1. Contracts with an individual or with the employer of an individual who is not an employee of another county or a city may be entered into only for specifically designated projects. The inspector, if designated from another county or city under this section, while exercising the duties of the position, is a county employee. The county shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the county as it does for an individual who is an employee of the county. The company or individual with whom the county contracts shall have errors and omissions and other insurance coverage acceptable to the county."

Section 2. G.S. 153A-355 reads as rewritten:

"**§ 153A-355. Conflicts of interest.**

Unless he or she is the owner of the building, no member of an inspection department ~~or other individual contracting with a county to conduct inspections~~ shall be financially interested or employed by a business that is financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department or other individual or an employee of a company contracting with a county to conduct inspections may engage in any work that is inconsistent with his or her duties or with the interest of the ~~county.~~ county, as determined by the county. The county must find a conflict of interest:

(1) If the individual, company, or employee of a company contracting to perform inspections for the county has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform inspections for the county is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform inspections for the county has a financial or business interest in the project to be inspected."

Section 3. G.S. 160A-413 reads as rewritten:

"**§ 160A-413. Joint inspection department; other arrangements.**

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or ~~county, or may~~ county. A city may also contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or ~~G.S. 153A-351.1.~~ G.S. 153A-351.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1. Contracts with an individual or with the employer of an individual who is not an employee of another city or a county may be entered into only for specifically designated projects. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The company or individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g)."

Section 4. G.S. 160A-415 reads as rewritten:

"**§ 160A-415. Conflicts of interest.**

No member of an inspection department ~~or other individual contracting with a city to conduct inspections~~ shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor,

unless he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with a city to conduct inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the ~~city.~~ city, as determined by the city. The city must find a conflict of interest:

(1) If the individual, company, or employee of a company contracting to perform inspections for the city has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform inspections for the city is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform inspections for the city has a financial or business interest in the project to be inspected.

The Provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years."

Section 5. G.S. 143-151.8 reads as rewritten:

"§ 143-151.8. Definitions.

(a) As used in this Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Code Officials Qualification Board.

(2) "Code" means the North Carolina State Building Code and related local building rules approved by the Building Code Council heretofore or hereinafter enacted, adopted or approved pursuant to G.S. 143-138.

(3) "Code enforcement" means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof, or the enforcement of fire code regulations as an

employee of the State or local government ~~or other~~ as an individual contracting with the State or a local government to conduct inspections, or as an individual who is employed by a company contracting with a county or a city to conduct inspections, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules.

(4) "Local inspection department" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and rules enacted by the State and the local government which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings, and conditions that may create hazards of fire, explosion, or related hazards.

(5) "Qualified Code-enforcement official" means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified."

Section 6. 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 7-7-99

S. B. No. 966 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Pope
Sen.)

moves to amend the bill on page 2, line 29

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"county. The county must find a conflict of interest if any of the following is the case:" and

on page 4, line 6,

by rewriting that line to read:

"The city must find a conflict of interest if any of the following is the case:".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

7/7/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 532
Proposed Committee Substitute S532-PCSRG-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Asheville Civil Service Board. (Local)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS RELATED TO THE CIVIL SERVICE BOARD OF THE CITY OF ASHEVILLE, AND AUTHORIZING BUNCOMBE AND POLK COUNTIES TO CONDUCT ADVISORY REFERENDA ON ZONING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 757 of the 1953 Session Laws, as amended, reads as rewritten:

"Section 1. There is hereby established as a part of government of the City of Asheville, ~~a municipal corporation of the State of North Carolina a Department of Civil Service, to be under the general management and control of a Director of Civil Service, acting in cooperation with~~ a Civil Service ~~Board, and having~~ Board which shall have the powers and ~~performing~~ perform the duties specified in this Act with respect to the classified service of the City of Asheville as ~~hereinafter defined.~~ defined in this Act. The City Manager shall provide for the operational needs of the Civil Service Board in the City's annual budget.

~~Sec. 2.~~ Section 2. ~~The Civil Service Board shall consist of five (5) members as follows: The Director of Civil Service, and one additional member who shall be chosen by the Council of the City of Asheville at a meeting of said Council, with fifteen (15) days after the ratification of this Act, and shall serve at the~~

~~pleasure of said Council. Two (2) members, who shall be elected by the members of the classified service of the City, as hereinafter defined, at an election for that purpose, to be called by the City Manger, and held within fifteen (15) days after the naming of the above two members by the Council, and after ten (10) days written notice to each employee of said classified service, said two (2) members to serve for a term of two years and until the election of their successors by the members of said classified service biennially thereafter. Within five (5) days after the election of the two (2) members of the board by the employees of the classified service, the City Manager shall call a meeting of the four members of the board then chosen, at which meeting, or an adjournment thereof, within five days thereafter, said members shall select by a majority vote, a fifth (5th) member of the board. If such member is not so elected, then the City shall choose a fifth (5th) member, of said board. The fifth (5th) member of the board shall serve for a term of two years and until the election of his successor biennially thereafter in the same manner as above provided.~~

The Civil Service Board shall consist of five members as follows: (i) two members who shall be chosen by the City Council at a meeting of the Council and they shall serve at the pleasure of the Council; (ii) two members who shall be elected by the members of the classified service of the City, as defined in this Act, at an election held for that purpose and on a normal City work day not less than 10 nor more than 30 days after written notice of the date of the election is provided to each member of the classified service; and (iii) one member who shall be selected by majority vote of the four other members already selected or elected at a meeting held within 30 days after the members elected by the classified service have taken office. If a member is not elected by majority vote of the four other members, the City Council shall appoint a member to the Board. All members of the Board shall be eligible for successive terms, in the same manner in which they were initially selected or elected, and may serve beyond the end of their respective terms until their successors take office. The chair of the Civil Service Board shall be appointed annually by the City Council, or more often as needed, from among the membership of the Board. The members of the Board shall serve without compensation, but may be reimbursed for expenses pursuant to policies adopted by the City.

The City Council shall, by ordinance not inconsistent with this act, establish the procedure for the election of the representatives of the employees in the classified service, and

provide for meeting the expense for such elections. The members of the Civil Service Board must all be qualified voters of the City of Asheville, not employed by the ~~city,~~ city or serving on the City Council. In the event of a vacancy on ~~said~~ the Board, such vacancy shall be filled by the body or group, choosing the member, a successor to whom is to be chosen, and in the manner herein provided for the selection of such member.

~~Sec. 3.~~ Section 3. The classified service of the ~~city~~ City shall include all officers and employees of the City of Asheville, except officers elected by the people, the city manager, directors of departments, as defined in the city charter, and members of advisory boards appointed by such directors, the city clerk, ~~the clerk of the police court,~~ or any deputy clerk of the City of Asheville, and members of any board or commission appointed by the ~~council,~~ Council, and employees of independent boards now choosing their own employees.

~~Sec. 4.~~ Section 4. The Civil Service Board shall make, and may amend, rules for promoting efficiency in the classified service of the ~~city, for the appointment, promotion, transfer for the layoff, reinstatement, suspension and removal of employees in the classified service.~~ City as provided in Section 5 of this Act. Such rules and any amendment thereto, shall be submitted to the ~~said council~~ Council for approval, and shall be open to public inspection, when filed with the ~~said council~~ Council for ~~such~~ approval. The ~~city council,~~ City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon such proposed rules and amendments, and such rules or amendments, when approved by a majority vote of the ~~council,~~ Council, shall be in full force and effect. The ~~council~~ Council may, before approval, amend the rules or amendments thereto, submitted to it for approval.

~~Sec. 5.~~ Section 5. Such rules, ~~above mentioned,~~ as authorized in Section 4 of this Act, among other things, may provide:

(1) For the standardization and classification of all positions and employments in the classified service of the ~~city.~~ City. Such classification into groups and subdivisions shall be based upon and graded according to duties and responsibilities, and so arranged as to promote the filling of the higher grades, so far as practicable, through promotions. The City Manager or his or her designee shall consult representative employees in the Police and Fire Departments to establish criteria to be used

to fill each position within those respective departments, including lateral entry positions. If only one representative employee is consulted, he or she shall be a representative chosen by the employees of the respective department. If a group of two or more employees is established for purposes of this subsection, at least half of the employees shall be chosen by the employees of the respective department. The Civil Service Board shall have the authority to approve any criteria established and the criteria shall apply only to persons promoted or hired after the effective date of the approval. This provision shall not apply to hiring or promotional processes initiated prior to the effective date of this Act.

~~(2) For open competitive tests to ascertain the relative fitness of all applicants for appointment in the competitive class.~~

~~(3) For public notice of the time and place of all competitive tests, at least: ten days in advance thereof, by publication in the paper of the city having the largest or second largest circulation and in all copies of the issues thereof having the largest circulation in the city, and by posting a notice in conspicuous place in the city hall.~~

~~(4) For the creation of eligible lists upon which shall be entered the names of the successful applicants in the order of their standing in the competitive tests, and without reference to the time of the test.~~

~~(5) For the rejection of applicants or eligibles who do not satisfy reasonable requirements as to age, sex, physical condition and moral character or who have attempted deception or fraud in connection with any test or their application therefor.~~

~~(6) For the certification to the appointing author from the appropriate eligible list, for filling a vacancy in the competitive class, of the three names standing highest in such list.~~

~~(7) For temporary employment without test, in the absence of an eligible list; but no such temporary employment shall continue after the establishment of a suitable eligible list nor for more than sixty days.~~

~~(8) For temporary employment for transitory work without test, but such employment shall require the consent of the Director of Civil Service in each case, and shall not continue for more than sixty days nor be renewed.~~

~~(9) For noncompetitive tests, for appointment to positions designated as requiring peculiar and exceptional qualifications of a scientific, managerial, professional or educational character.~~

~~(10) For promotion based on competitive tests and upon records of efficiency, character, conduct and seniority.~~

~~(11) For transfer from a position to a similar position in the same class and grade.~~

~~(12) For immediate reinstatement at the head of the eligible list of person who, without fault or delinquency on their part, are separated from the service or reduced in rank.~~

~~(13) For suspension for purpose of discipline, with or without pay, for not longer than ninety days, and for leave of absence with or without pay.~~

~~(14) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he so requests, been presented by the person responsible for his appointment with the reasons therefor specifically stated in writing and has been given an opportunity to be publicly heard in his own defense by the Civil Service Board. The written reasons for such discharge or reduction and nay reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.~~

~~(15) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities.~~

(2) For temporary or part-time employment to meet the transitory or seasonal needs of the City, except no temporary or part-time employment may occur or continue in violation of applicable State or federal law.

(3) For the establishment of a probationary period for new City employees prior to employees becoming members of the classified service, except no probationary period or any extension thereof may exceed one year in the aggregate.

(4) For suspension for purpose of discipline, with or without pay, for not longer than 90 days.

(5) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he or she so requests, been presented by the person responsible for his or her appointment with the reasons therefor specifically stated in writing

and has been given an opportunity to be publicly heard in his or her own defense by the Civil Service Board, in accordance with Section 8 of this Act. The written reasons for the discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.

(6) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities.

~~Sec. 6. There shall be kept in the department of Civil Service an application register in which shall be entered the names and addresses and the order and date of application of all applicants for civil service test and the office or employments which they seek. All applications shall be upon forms prescribed by the department for Civil Service.~~

~~Sec. 7. Tests required by the department of Civil Service shall be practical, shall relate to matters which fairly measure the relative fitness of applicants to discharge the duties of the position which they seek, and shall take account of character, training and experience. No question in any test shall relate to political or religious opinions, affiliations or service, and no appointment, transfer, layoff, promotion, reduction, suspension or removal shall be affected or influenced by such opinions, affiliations or service. Notice of the time, place and scope of each test shall be given by publication and posting as specified in Section 5 of this Act, and by mail, at least ten days in advance, to each applicant upon the appropriate lists of the application register.~~

~~Sec. 8. The list of applicants eligible to appointment by reason of civil service tests, which their grades, shall be known as the register of eligibles and shall be open to public inspection. The names of such eligibles shall be arranged in their respective lists in the order of their standing on test. The name of no person shall remain on the register of eligibles for more than two years without a new application, and, if the civil service rules as require, a new test.~~

~~Sec. 9. When any position in the classified service is to be filed, the officer having authority to fill such vacancy shall request of the director of civil service the certification of names of eligibles for appointment to such vacancy and upon receipt of such request the director of civil service shall~~

~~promptly certify to such officer the names and addresses of the highest three eligibles on the list for the class or grade to which such position belongs, with their respective grades as shown on the register of eligibles. The appointing authority shall appoint to such position one of the persons whose names are so certified.~~

~~Sec. 10. Whenever practicable, vacancies in the classified service shall be filled by promotion, and the civil service rules shall indicate the lines of promotion from each lower to higher grade wherever experience derived in the lower grade tends to qualify for the higher. Any advancement in rank shall constitute promotion. Lists from which promotions are to be made shall be created as provided by the civil service rules, and the appointment of eligibles therefrom shall be made in the same manner as original appointments. When there are less than three names on the promotion list eligible for certification in any instance, then if the City Manager requests it, appointments to higher positions shall be made after competitive tests, in which persons not in the service of the city may compete, as well as applicants for such positions from the lower grades of the service, or from other branches thereof. In such case, appointment shall be made from the highest three eligibles, as in the case of other competitive tests.~~

~~Sec. 11. There shall be maintained in the department of civil service a list of all persons in the classified service showing in connection with each name the position held, the salary or wages paid, the data and character of appointment, and every subsequent change in status. Such list shall be known as the service register and every appointing officer or authority shall promptly transmit to the department of civil service all information requested for the establishment and maintenance of each register.~~

~~Sec. 12. The treasurer shall not pay, nor shall any officer of employee of the city issue a check for the payment of any salary or compensation to any person holding or claiming to hold, a position in the classified service, unless the payroll or account of such salary or compensation shall bear the certificate of the director of civil service that the persons named therein have been appointed or employed and are performing service in accordance with the civil service provisions of this Act and the rules established thereunder, that their names appear upon the service register for the time for which such salary or compensation is claimed and that the salary or compensation is at the rate indicated on such register. If the treasurer or any~~

~~officer or employee shall willfully or negligently violate any of the provisions of this Section, he and the sureties on his bond shall be liable to the City for the amount thereof and action may be brought therefor by an taxpayer for the use of the city without making previous request of the city to sue.~~

Section 6. The Civil Service Board shall have the authority, exercisable by any of its members, to review and approve all promotional processes in the Police and Fire Departments, and may review any promotional decision in accordance with Section 7 of this Act but no promotional decision may be changed except in accordance with Section 8 of this Act. This section shall not apply to promotional processes initiated prior to the effective date of this Act.

~~Sec. 13.~~ Section 7. The ~~council,~~ Council, the ~~city manager,~~ City Manager, the ~~Director or~~ chair of the Civil Service Board, or any person designated by any of them, may make investigations concerning the facts in respect to the operation and enforcement of the provisions of this Act and of the rules established thereunder, and concerning the condition of the civil service of the ~~city~~ City or any branch ~~thereof.~~ thereof, and may refer such matters to the Civil Service Board for hearing in accordance with Section 8 of this Act, or for further investigation as appropriate. ~~Written charges of misconduct or inefficiency against any officer or employee in the classified service may be filed with the Director of Civil Service by any person. The Civil Service Board shall investigate any such charges, or cause them to be investigated, and report the findings of the investigation, in writing, to the authority responsible for the appointment of the officer or employee against whom the charges have been made.~~ Any person, or persons, making any investigation authorized or required by this ~~Section,~~ section, shall have the power to subpoena and require the attendance of witnesses. A copy of the report of ~~such~~ the investigation shall be filed with the city clerk and be open for public ~~inspection.~~ inspection, subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of records in this State.

~~Sec. 14.~~ Section 8. (a) Whenever any member of the classified service of the City ~~of Asheville~~ is discharged, suspended, reduced in rank, transferred against his or her will, or is denied any promotion or raise in pay which he or she would be entitled to, that member shall be entitled to a hearing before the Civil Service Board ~~of the City of Asheville~~ to determine whether or not the action complained of is justified.

(b) Any member of the classified service of the City ~~of Asheville~~ who desires ~~such~~ a hearing shall file his or her request for hearing with the city clerk within 10 days after learning of the act or omission of which he or she ~~complains.~~ complains, but not before the member shall have exhausted his or her remedy provided by the grievance procedures established by ordinance or policy of the City and the grievance procedure shall be concluded within 30 days. If the grievance procedure is not concluded within 30 days, the member may proceed as provided in this section. Upon receipt of ~~such notice,~~ notice as required in this section, the city clerk shall set the matter for hearing before the ~~civil service board~~ Civil Service Board at a date not less than five nor more than 15 days from the clerk's receipt of such notice. Except for the time for filing the initial request for hearing with the Board, the Board may extend the time for taking action under this section for cause or by agreement of the parties to the proceeding.

(c) Any member of the classified service of the City ~~of Asheville~~ who requests a hearing pursuant to this ~~act~~ Act shall be entitled to be represented by counsel of his or her choice at all stages of the proceeding. ~~It shall be the duty of the city attorney to represent the city in cases where the complaining member of the classified service is represented by counsel.~~ The City may be represented by its attorney at any such hearing.

(d) At such hearing, the burden of proving the justification of the act or omission complained of shall be upon the City ~~of Asheville~~ and the member requesting the hearing shall be entitled to inspect and copy any records upon which the ~~city~~ City plans to rely at ~~such hearing, provided, that such~~ the hearing if the records are requested in writing by the member or his or her attorney prior to the day set for the hearing.

(e) The ~~civil service board~~ Civil Service Board shall render its decision in writing within five days after the conclusion of the hearing. If the ~~board~~ Board determines that the act or omission complained of is not justified, the ~~board~~ Board shall order to rescind whatever action the ~~board~~ Board has found to be unjustified and may order the ~~city~~ City to take such steps as are necessary for a just conclusion of the matter before the ~~board.~~ Board. Upon reaching its decision, the ~~board shall~~ Board shall, in writing, immediately inform the city clerk and the member requesting the hearing of the ~~board's decision and shall do so in writing.~~ Board's decision.

(f) Within ten days of the receipt of notice of the decision of the ~~board,~~ Board, either party may appeal to the Superior

Court Division of the General Court of Justice for Buncombe County for a trial de novo. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the facts upon which the petitioner relies for relief. If the petitioner desires a trial by jury, the petition shall so state. Upon the filing of the petition, the clerk of the superior court shall issue a civil summons as in regular civil action, and the sheriff of Buncombe County shall serve the summons and petition on all parties who did not join in the petition for trial. It shall be sufficient service upon the City ~~of Asheville~~ for the sheriff to serve the petition and summons upon the clerk of the ~~City of Asheville.~~ City. Thereafter, the matter shall proceed to trial as any other civil action.

~~Sec. 15. The Council shall be ordinance establish a schedule of compensation for officers and employees in the classified service which shall provide uniform compensation for like service. such schedule of compensation may establish a minimum and a maximum for any grade.~~

~~Sec. 16. Any applicant for any office or employment in the classified service who shall knowingly make any false statement in connection with any test shall thereby forfeit his right to be entered upon the eligible register and in case he has been appointed to an office or employment, he shall forfeit it and shall not within three years thereafter be eligible to appointment to any office or employment in the service of the City, nor shall he, during that time, be entitled to take any civil service test.~~

~~Sec. 17. No applicant for civil service test or for appointment to the classified service shall, either directly or indirectly, give, render or pay or promise to give, render or pay any money, service or other valuable thing to any person for or on account of, or in connection with, his test, appointment or proposed appointment, nor shall he ask for or receive any recommendation or assistance from any person in the services of the city other than a statement regarding any previous service to the city as a subordinate under such officer or employee.~~

~~Sec. 18. No person shall willfully or corruptly make any false statement, certificate, mark, grading or report in regard to any test or appointment held or made under the civil service provisions of this Act, or in any manner commit or attempt to commit any fraud on the impartial execution of any provisions of the civil service rules.~~

~~Sec. 19. No person in the administrative and/or classified service of the city shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or political purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political purpose from any person holding a position in the administrative and/or classified service. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment, to any position in the service of the city as a reward or return for personal or partisan political service.~~

~~Sec. 20.~~ Section 9. No person about to be appointed to any position in the service of the ~~city~~ City shall sign or execute a resignation dated or undated, in advance of such appointment. No person in the service of the ~~city~~ City shall discharge, suspend, layoff, reduce in grade or in any manner change the official rank or compensation of any person in such service, or promise or threaten to do so, for withholding or neglecting to make any contribution or money or service or any valuable thing for any political purpose. ~~No person in the administrataive service of the city shall use his official authority to influence or coerce the political action of any person or body, or to interfere with any nomination or election to public office.~~

~~Sec. 21. No person in the administrative and/or classified service of the City of Asheville shall act as an officer of a political organization, take part in a political campaign, serve as a member of a committee of any such organization, or circulate, or seek signatures to any petition provided for by primary or election laws, or act as a worker in favor of or in opposition to any candidate for public office. This shall not be construed to restrict the right of any employee in the qualified service, to vote in any election, when qualified.~~

~~Sec. 22.~~ Section 10. It shall be the duty of the ~~Director of~~ Civil Service Board to supervise the execution of the foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be the duty of all persons in the service of the ~~city~~ City to comply with such rules and to aid in their enforcement. ~~Any person, who, by himself or with others, willfully or corruptly deceives or obstructs any person in respect to his/her right to take part in any test for admission to the classified service of the city; or willfully and corruptly marks, grades or reports upon the test or proper standing of any~~

~~person tested for appointment in the classified service, or aids in so doing; or willfully or corruptly makes any false representation as to the results of such tests or concerning persons so tested; or furnished special or secret information for the purpose of either improving or injuring the prospects or chances of a person tested, or to be appointed, employed or promoted; or impersonates any person, or permits or aids in any impersonation or appointment or request to be tested or registered; or who makes known or assists in making known to any applicant for test, in advance thereof, any question to be asked on such test, exercise the rights as stated herein; or willfully or through culpable negligence violates any of the provisions of this Act, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or by imprisonment for a term not exceeding six (6) months. If any such person be an applicant for competitive test, he shall be excluded therefrom; if he be an eligible, his name shall be removed from the register of eligibles; and if he be an officer or employee of the city, he shall immediately forfeit his office or employment.~~

~~Sec. 23. Any taxpayer in the city may maintain an action to recover for the City any sum of money paid in violation of the civil service provisions, or to enjoin the Director of Civil Service from attaching his certificate to a payroll, or account for services rendered, in violation of this Act or the rules made thereunder; and the rules made under the foregooing provisions shall for this and all other purposes have the force of law.~~

~~Sec. 24.~~ Section 11. Any and all employees of the classified service as ~~hereinabove defined,~~ defined in this Act, who are members of the classified service as defined in this Act at the time of the ~~first election of a Civil Service Director under this Act, shall, without test, certification or reappointment, or without complying with any of the provisions of this Act, relating in any way to qualifications for or appointment to the position she or he then holds,~~ effective date of this Act, shall be deemed to hold and occupy such position as an employee of the civil service of the ~~city~~ City, as established by this Act, subject only to layoff, ~~suspension~~ suspension, or removal therefrom, as provided in this Act, and all of the provisions of this Act shall be applicable to any and all such employees.

~~Sec. 25. In case of emergency, declared to be such by a resolution adopted by the council in regular or special session,~~

~~requiring, in the opinion of the council, the employment of more persons than are available for appointment from the eligible list in any branch of the classified service, or immediately available for appointment from such list, the city council may, without waiting for an eligible list of employees, employ or authorize the employment of as many employees as, in the opinion of the council, may be needed to meet the emergency, such employment to continue throughout the emergency and until an eligible list of employees is available.~~

~~Sec. 26. Constitutionality of Act.~~ Section 12. If any ~~Section,~~ section, subsection, subdivision, sentence, ~~clause~~ clause, or phrase of this Act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

~~Sec. 27.~~ Section 13. All laws and clauses of laws in conflict with the provisions of this ~~Act, including all of Chapter 83 of the Session Laws of 1947, as amended by Chapter 459 of the Session Laws of 1951, and Chapter 1000 of the Session Laws of 1951,~~ Act are hereby repealed.

~~Sec. 28. The public interest requires that this act shall be in full force and effect from and after its ratification.~~"

Section 2. Notwithstanding the provisions of this Act, the existing Civil Service Board shall continue in operation, with no interruption in the term of any current member, and without affecting the manner of selection or eligibility for current service or successive terms of any member, and the powers, duties, and responsibilities of the Board shall be as prescribed by this Act from and after the effective date of this Act.

Section 3.(a) The board of commissioners of a county may direct the board of elections of that county to conduct a countywide advisory referendum on zoning in the unincorporated area of that county.

Section 3.(b) The board of commissioners shall decide the form and content of the issue on the ballot.

Section 3.(c) Any referendum under this section must be conducted on or before December 31, 1999.

Section 3.(d) This section applies to Buncombe and Polk Counties only.

Section 4. Sections 1 and 2 of this act become effective 30 days after they become law. The remainder of this act is effective when it becomes law.

7/7/99

SENATE BILL 532:
Asheville Civil Service Board

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Carter
Date:	July 7, 1999	**Summary by:**	Tim Hovis and Esther Manheimer, Staff Attorneys
Version:	Committee Substitute *(Second Edition)*		

SUMMARY:

The City of Asheville is one of five cities in North Carolina with a Civil Service Act establishing a Civil Service Board (CSB), and Asheville is the only city of these five where the CSB is actively involved in the recruiting and selection of employees. In all five cities, the CSB is involved in the demoting and firing of employees. SB 532 makes a number of changes to Asheville's Civil Service Act including the elimination of the "Rule of 3" (a testing requirement for new hires), changes to the hearing procedures for grievances, and elimination of the ban on employee political activity.

BILL ANALYSIS:

Independent Board Under the Umbrella of the City.

Section 1. Currently, the CSB is a separate municipal corporation and this bill would bring the CSB under the umbrella of the City. The Board would remain an independent board such as the Board of Adjustment, and the Board's operational costs would be part of the City's budget.

Board Member Selection.

Section 2. Under SB 532, the City Council may select two members of the five member CSB. The Council may also select the chair of the CSB. Currently, the Council selects one member of the CSB and the chair is the Director of Civil Service. Under SB 532, CSB members may not be members of the City Council.

Sections 3 and 4. Technical and conforming changes only.

"Rule of 3" Removed.

Section 5. This section of the bill removes the "Rule of 3". The "Rule of 3" states that job applicants must be tested and the only applicants that may be considered for a position are the three highest test scores. SB 532 would repeal the "Rule of 3" and any reference to testing that is contained in the original act. Section 5 also provides that CSB shall make rules regarding the following:

- Employees of the Police and Fire Departments shall be consulted to establish criteria for hiring in those departments, including lateral entry positions. The CSB may approve the criteria.
- For temporary or part-time employment to meet seasonal needs of the City.
- Setting a probationary period of not more than one year before new employees become members of the classified service.

- Current provisions regarding suspension of employees for 90 days or less and firing and demoting employees shall remain in the act.

Provisions regarding an application register, testing and making test results public are repealed by SB 532. In addition, requirements that vacancies be filled by promotion before being advertised to the public are also repealed by this bill. Finally, this section of the bill repeals provisions regarding CSB record keeping and paycheck issuance.

CSB to Review and Approve Promotional Processes in Police/Fire Departments.
Section 6. While SB 532 would remove the CSB from the recruitment and selection process for most employees, section 6 of the bill allows the CSB to review and approve all promotional processes in the Police and Fire Departments, and the CSB may review promotional decisions in these departments.

Grievance Procedures must be Exhausted Prior Filing a Request for Hearing.
Sections 7 and 8. Currently, employees who are members of the classified service are entitled to a hearing before the CSB when they are discharged, suspended, demoted, transferred, or denied a promotion or raise. This bill would add the additional requirement that, prior to filing a request for a hearing, the aggrieved employee must exhaust all remedies provided for under the grievance procedures established by ordinance or policy of the City. If the grievance procedure exceeds 30 days the employee may file a request for hearing.

Sections 9-13. Provisions requiring the City Council to set salaries by ordinance are repealed by SB 532. In addition, all sections that restrain an **employee's right to participate in political activities** are repealed because they directly conflict with G.S. 160-169 which allows political activity by employees (within limitations). Finally, provisions giving citizens the right to maintain civil actions against the City for money paid in violation of the Civil Service Law and provisions authorizing the City to make emergency hires are repealed.

Zoning Referenda
The bill also authorizes the Board of Commissioners of Buncombe and Polk Counties to conduct on or before Dec. 31, 1999 countywide referenda on zoning in unincorporated areas.

With respect to CSB changes, the act becomes effective 30 days after ratification and the CSB shall continue in operation without interruption of the term of any current member, and without affecting the manner of selection or eligibility for current service or successive terms of any member.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/7/99

S. B. No. 532 Amendment No. 1

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbitt

)

Sen.)

moves to amend the bill on page 13, line 38-39

( ) WHICH CHANGES THE TITLE

by deleting the words "and Polk Counties" and substituting the word "County";

and on page 1, lines 3-4 by deleting the words "AND POLK COUNTIES TO CONDUCT ADVISORY REFERENDA" and substituting the words "COUNTY TO CONDUCT AN ADVISORY REFERENDUM"

SIGNED Martin Nesbitt

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☒ Committee Substitute for
S.B. 966 A BILL TO BE ENTITLED AN ACT RELATING TO THE AUTHORITY TO ENTER INTO CONTRACTS FOR CONDUCTING MUNICIPAL AND COUNTY BUILDING INSPECTIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill,** ☐ which changes the title, **unfavorable as to Senate committee substitute bill.**

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☒ Committee Substitute for
S.B. 532 A BILL TO BE ENTITLED AN ACT REWRITING THE LAWS RELATED TO THE CIVIL SERVICE BOARD OF THE CITY OF ASHEVILLE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill,** ☒ **which changes the title, unfavorable as to Senate committee substitute bill.**

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **July 7, 1999**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martha Glass	DOA
DAVID R. Anders	PFFPNC
Jim Brown	State Ports —
Dan Williams	N CMBA
Mark Benson	Capitol Group
Ron Aycock	NCFA ((
Jim Blackburn	"
Anna Lin	Charlotte Observer
Jim BARON	MECK COUNTY E&BS
Mary Carmilia	Mecklenburg County
Tim Kent	American Institute of Architects
Henry Jones	Attorney Raleigh
Ray Brewington	DOA Purchase & Contract
Catherine Davis	Electricities
Patti Carstens	SCO
LYMAN COOPER	CSX CORP.
Bob Keele	NC DOC
Rodney Perry	NC DOC
Terry Wyatt	NC DOJ
D Richardson	Mck. Co. Comm.
Lisa Reyes	THE INSIDER
Dan Cooper	NCCBA
Daschel Ogburn	NCDOT
Clark Cate	JCarole

House Committee
on
Ways and Means

Minutes
July 8, 1999

The House Committee on Ways and Means met at 12:00 noon on Thursday, June 8, 1999 in Room 1425 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, called the meeting to order and recognized Senator Larry Shaw to explain **SB 283 (N.C. Purchasing Opportunities).**

He said the bill eliminates the requirement that the Division of Purchase and Contract public a bi-weekly Purchase and Contract Directory, and substitutes a requirement that the Division electronically advertise information on contract and purchase requirements from agencies of State government which make direct purchases from private suppliers.

Upon conclusion of his remarks, Rep. Blue moved to give the bill a favorable report and the motion passed.

SB 284 (Small Business Procurement Review) was before the committee and Senator Larry Shaw was recognized to explain the bill.

He said the bill directs the Department of Administration to compile and analyze information related to the participation of small and medium-sized businesses in State contracts for the purchase of goods and services. It would also direct the Department to study measures to encourage the participation of small and medium-sized businesses in State contracts.

Rep. Haire moved to give the bill a favorable report and his motion passed.

SB 776 (Remove Sunset/Purchasing Exemptions) was once again before the committee. Rep. Haire, chair of the Subcommittee for SB 776, presented a proposed committee substitute to the committee and moved for its adoption. The motion passed.

Staff Jeff Hudson explained the changes from the original bill. He said any time any entity in the bill uses the exemption they will be required to report to the Governmental Operations Commission.

When there was no further discussion, Rep. Haire moved to give the committee substitute a favorable report, the original bill an unfavorable report. The motion passed.

SB 1058 (General Contractors Licensure) was before the committee and Senator Clodfelter was recognized to explain the bill.

He said the bill would amend the General Contractors licensing law to require the Board of General Contractors to test applicants on relevant matters in the State Building Code and to authorize the Board to refuse to issue or renew, to suspend or to restrict a potential general contractor or a licensed general contractor for fraud, gross negligence, incompetency, or misconduct in the practice. The bill also authorizes the Board to restrict the ability of a person to act as the qualifying party for a general contractor's license for a business entity if the person committed any of these violations.

Rep. Buchanan Moved to give the bill a favorable report and the motion passed.

Rep. Nesbitt thanked the committee for the excellent work they did this Session. He also thanked Staff members Jeff Hudson and Tim Hovis for the excellent work they have done.

The meeting adjourned at 1:00 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 283
Second Edition Engrossed 4/26/99

Short Title: N.C. Purchasing Opportunities. (Public)

Sponsors: Senators Shaw of Cumberland; Jordan and Lucas.

Referred to: Information Technology.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT TECHNOLOGICAL IMPROVEMENTS IN THE WAY PURCHASING OPPORTUNITIES ARE ADVERTISED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-345.8 reads as rewritten:

"**§ 143-345.8. North Carolina Purchase Directory.**

The Division of Purchase and Contract of the Department of Administration shall ~~publish a tabloid size, biweekly publication to be known as the "North Carolina Purchase Directory" which shall contain~~ electronically advertise information on contract and purchase requirements from the Division of Purchase and Contract, the Office of State Construction, the Department of Transportation, and other agencies of State government which make direct purchases from private suppliers. ~~The Division shall mail four free issues of this publication to all persons and businesses on the current bidders roster, to all Chambers of Commerce in North Carolina, to all business associations in North Carolina and to all persons or businesses on a list to be supplied by the Department of Commerce, within 30 days after the effective date of this section; thereafter the Division shall make the publication available on a subscription basis. Said subscription price shall not exceed forty dollars ($40.00) per year and shall be computed taking into consideration the cost of producing and mailing the publication.~~ The Division shall coordinate with the other departments of State government to ensure that the ~~publication~~ electronic advertisement is meeting the goals of disseminating as widely as possible and in a timely manner information on those State contracts which are open for bids. A printed copy of any information

that is electronically advertised shall be made available to any party upon request. The Secretary of the Department of Administration may adopt rules governing the routine and procedures to be followed in advertising information on contract and purchase opportunities, what contracts and purchases will be advertised, and under what conditions exceptions to the electronic advertisement may occur."

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Secretary of the Department of Administration may adopt temporary rules to implement the provisions of this act. Under rules to be adopted by the Secretary, the Division may advertise information regarding contract and purchase requirements in both print and electronic format for a period of 12 months following the effective date of this act.

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

7/8/99 1

SENATE BILL 283:
N.C. Purchasing Opportunities

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Sen. Larry Shaw
		Summary by:	Tim Hovis Committee Counsel
Date:	July 7, 1999		
Version:	Second Edition		

SUMMARY: Senate Bill 283 eliminates the requirement that the Division of Purchase and Contract publish a bi-weekly Purchase and Contract Directory, and substitutes a requirement that the Division electronically advertise information on contract & purchase requirements from agencies of State government which make direct purchases from private suppliers.

CURRENT LAW: G. S. 143-345.8 requires that the Division of Purchase and Contract publish a bi-weekly publication known as the N.C. Purchase Directory, which contains information on contract and purchase requirements from the Division of Purchase & Contract, the Office of State Construction, the Department of Transportation, and other State agencies which make direct purchases from private suppliers. The publication is made available on a subscription basis at a cost not to exceed $40/year. Subscribers include bidders, Chambers of Commerce, and interested individuals and businesses.

BILL ANALYSIS: Senate Bill 283 would eliminate the requirement for publishing the printed directory, and would instead require that the Division electronically advertise the information. The Division must provide a printed copy of the information to any party upon request. While the term "electronically advertise" is not defined, it would likely include dissemination of the information by way of an Internet web site and/or through an e-mail subscriber list. The Secretary of Administration is authorized to adopt rules governing the routine and procedures to be followed in advertising information on contract and purchase opportunities, what contracts and purchase will be advertised, and under what conditions exceptions to electronic advertisement may occur. The Division is authorized to advertise information in both print and electronic format for a period of 12 months following the effective date of the act.

Senate Bill 283 gives specific authority to the Secretary of Administration to adopt temporary rules to implement the electronic advertising. Under G.S. 150B-21.1, an agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of the Administrative Procedure Act would be contrary to the public interest and that the immediate adoption of the rule is required by the effective date of a recent act of the General Assembly. The Secretary must prepare a written statement of its findings of need for a temporary rule and must sign the statement.

EFFECTIVE DATE: The bill would be effective when it becomes law.

Ms. Brenda Carter, Counsel, Senate Committee on Info. Tech., contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 284
Commerce Committee Substitute Adopted 3/31/99

Short Title: Small Business Procurement Review. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW STATE PROCUREMENT CONTRACT AWARDS BY BUSINESS SIZE CATEGORY AND TO REVIEW MEASURES TO ENCOURAGE PARTICIPATION BY SMALL AND MEDIUM-SIZED BUSINESSES IN STATE PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-48 reads as rewritten:

"**§ 143-48. (See editor's note) State policy; cooperation in promoting the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.**

(a) Policy. -- It is the policy of this State to encourage and promote the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration.

(b) Reporting. -- Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars ($500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

(1) Except as provided in subdivision (1a) of this section, a business in one of the categories above means one:
   a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
   b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.

(1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.

(1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
   a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
   b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
   c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in

accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

(2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a through d.

(3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

(c) The Department of Administration shall compile information on small and medium-sized business participation in State contracts subject to this Article and report the information as provided in subsection (d) of this section. The report shall analyze (i) contract awards by business size category, (ii) historical trends in small and medium-sized business participation in these contracts, and (iii) to the extent feasible, participation by small and medium-sized businesses in the State procurement process as dealers, service companies, and other indirect forms of participation. The Department may require reports on contracting by business size in the same manner as reports are required under subsection (b) of this section.

(d) The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

(e) In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees."

Section 2. The Department of Administration shall study measures to encourage and foster participation by small and medium-sized businesses in State procurement contract awards. The study shall review and consider, among other issues:

(1) Methods to increase small and medium-sized businesses' knowledge of State procurement opportunities.

(2) Methods to assist small and mediumsized businesses in bidding on State procurement contracts.

(3) Submission of bids on State procurement contracts through joint ventures, partnerships, or other lawful means by which small and medium-sized businesses can submit consolidated bids for State procurement contracts.

(4) Impact of current purchasing policies and procedures on small and medium-sized businesses.

No later than April 15, 2000, the Department shall report its findings and recommendations, including any legislative proposals, to the General Assembly by filing copies of the report with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Library.

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

7-8-99

SENATE BILL 284:
Small Business Procurement Review

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator L. Shaw
Date:	July 7, 1999	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Second Edition		

SUMMARY: ***Senate Bill 284 directs the Department of Administration to compile and analyze information related to the participation of small and medium-sized businesses in State contracts for the purchase of goods and services. Senate Bill 284 also directs the Department to study measures to encourage the participation of small and medium-sized businesses in State contracts.***

CURRENT LAW: Under current law, it is State policy to encourage the use of small businesses, as well as businesses owned by minorities, women, and the disabled in State contracts for the purchase of goods and services. There are, however, no reporting requirements for small businesses as there are for businesses owned by minorities, women, and the disabled.

BILL ANALYSIS: Section 1 of Senate Bill 284 directs the Department of Administration to delineate different categories of small and medium-sized businesses and provide the General Assembly with annual reports on how each category is faring under the State contract system and how they have fared historically. In addition, small and medium sized businesses often indirectly benefit from State contract awards to large manufacturers by serving as dealers or service technicians on those contracts. To the extent that the Department can track these indirect forms of participation, that information will also be included in the report. Section 1 of Senate Bill 284 also makes grammatical corrections to references in the existing law to small contractors, minority contractors, and physically handicapped contractors.

Section 2 of Senate Bill 284 directs the Department of Administration to study measures that can be used to increase participation by small and medium-sized businesses in State contracts, how to help these businesses with bidding requirements, and how current policies and procedures impact small and medium-sized businesses. This section also directs the Department to consider the ability of small and medium-sized businesses to form partnerships or joint ventures to submit bids on particular contracts. The Department must report its findings and recommendations, including any legislative proposals, to the General Assembly by April 15, 2000.

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

Linwood Jones, Research Division, contributed to the preparation of this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 776
PROPOSED HOUSE COMMITTEE SUBSTITUTE S776-CSSB-005
18:27:46 EZT / 7-JUL-99

ATTENTION: Line numbers may change after adoption.

Short Title: Amend Purchase and Contract Exemptions. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW EXEMPTING CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-315.36 reads as rewritten:

"§ 113-315.36. ~~Purchase of supplies, material, equipment, and building~~ Building contracts.

(a) The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

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

(2) Except for G.S. 143-128(f), Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the ~~Authority, but, with respect to these contracts, the powers and duties established in that Article~~ Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the ~~contracts.~~ contract.

(3) G.S. 143-341(3) ~~shall~~ does not apply to ~~the~~ plans and specifications for construction or renovation authorized by the ~~North Carolina Seafood Industrial Park Authority.~~ Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by ~~Articles 3 and~~ Article 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any ~~purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000)~~ building contract to which this exemption is applied. The quarterly report required by this subsection shall specifically include information regarding the Authority's compliance with the provisions of G.S. 143-128(f)."

Section 2. Section 4 of S.L. 1997-331 reads as rewritten:

"Section 4. This act is effective when it becomes ~~law and expires July 1, 1999.~~ law. Section 3 of this act expires July 1, 1999."

Section 3. This act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1058
Judiciary I Committee Substitute Adopted 4/27/99

Short Title: General Contractors Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-10(b) reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of relevant matters contained in the North Carolina State Building Code, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in ~~said~~ the certificate, which may be limited into five classifications as the common use of the terms are known -- that ~~is,~~ is:

(1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types;~~ types.

(1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to ~~G.S. 143-138;~~ G.S. 143-138.

(2) Highway ~~contractor;~~ contractor.

(3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:

a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping ~~stations;~~ stations.

b. Water and wastewater treatment facilities and appurtenances ~~thereto;~~ thereto.

c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer;~~ customer.

d. Public communication distribution ~~facilities; and~~ facilities.

e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor ~~qualifies, and~~ qualifies.

(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected."

Section 2. G.S. 87-11(a) reads as rewritten:

"(a) The Board shall have the power to ~~revoke the certificate of license of any general contractor licensed hereunder who~~ refuse to issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, ~~incompetency~~ incompetency, or misconduct in the practice of his or her profession, or willful violation of any ~~provisions~~ provision of this Article. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a

qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a1) Any person may prefer charges of ~~such~~ fraud, deceit, ~~negligence~~ negligence, or misconduct against any general contractor licensed ~~hereunder; such~~ under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. ~~Such~~ The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

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

7/8/99

SENATE BILL 1058:
General Contractors License

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Senator Clodfelter
Date:	June 30, 1999	**Summary by:**	Tim Hovis and Walker Reagan, Staff Attorneys
Version:	Second Edition		

SUMMARY: ***Senate Bill 1058 would amend the General Contractors licensing law to require the Board of General Contractors to test applicants on relevant matters in the State Building Code and to authorize the Board to refuse to issue or renew, to suspend or to restrict a potential general contractor or a licensed general contractor for fraud, gross negligence, incompetency, or misconduct in the practice. The bill also authorizes the Board to restrict the ability of a person to act as the qualifying party for a general contractor's license for a business entity if the person committed any of these violations.***

CURRENT LAW: Current law does not require that an applicant for a general contractor's license be tested on the State Building Code. Current law only authorizes the Board to revoke the license of a general contractor for fraud in getting the license and gross negligence, incompetency, or misconduct in the practice. The Board is not authorized to suspend, restrict, or take disciplinary action other than revocation.

BILL ANALYSIS: Section 1 of the bill amends G.S. 87-10(b) to require the State Licensing Board for General Contractors to test for relevant matters in the North Carolina State Building Code as part of the licensing examination.

Section 2 amends G.S. 87-11(a) to broaden the types of punishment the Board may impose and to permit the Board to take certain disciplinary actions without taking the person's license. The Board is given the power to refuse to issue or renew a license, or revoke, suspend, or restrict a general contractor's license, or to issue a reprimand or take other disciplinary action if the general contractor is guilty of fraud or deceit in obtaining the license, or is guilty of gross negligence, incompetency, or misconduct in the practice of general contracting. The Board also is being give the authority to revoke, suspend or otherwise restrict the ability of any person to act as the licensee for a business entity to act as a general contractor if the person violated this section and the Board took disciplinary action against the person.

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

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☐ Committee Substitute for
S.B. 283 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT TECHNOLOGICAL IMPROVEMENTS IN THE WAY PURCHASING OPPORTUNITIES ARE ADVERTISED.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill and recommend that the bill be re-referred to the Committee on ☐.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☒ Committee Substitute for
S.B. 284 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW STATE PROCUREMENT CONTRACT AWARDS BY BUSINESS SIZE CATEGORY AND TO REVIEW MEASURES TO ENCOURAGE PARTICIPATION BY SMALL AND MEDIUM-SIZED BUSINESSES IN STATE PROCUREMENT CONTRACTS.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill and recommend that the bill be re-referred to the Committee on ☐.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means.**

☐ Committee Substitute for
S.B. 776 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE LAW EXEMPTING CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ **With a favorable report as to House committee substitute bill**, ☒ **which changes the title, unfavorable as to original Senate bill** and recommend that the bill be re-referred to the Committee on).

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Nesbitt** for the Committee on **Ways and Means**.

☒ Committee Substitute for
S.B. 1058 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.

☒ **With a favorable report.**

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

☐ With a favorable report, as amended.

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

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

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill and recommend that the bill be re-referred to the Committee on).

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/24/99

VISITOR REGISTRATION SHEET

Ways + Means

~~Election Law & Campl Fin.~~

Name of Committee

July 8, 1999

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Rodney W. Perry	NC Dept of Commerce
Terry White	NC Dept of Justice
John Leaston	NC DOA P+C
Jim Brown	State Ports —
Mary L. Carmilia	Mecklenburg County
Don Clodfelter	Senate 40
Martha Glass	DOA
Oak McKee	Scenic NC, Inc.
Alan Mills	Bailey & Dixon
Henry Jones	Attorney - Raleigh
[illegible] Carpenter	NCHBA
Hugh Tilley	NCHBA
Mark Selph	Board for General Contractors

Box 15

1. 2000 House Ways & Means
2. 1999 House Welfare Reform
3. 1999-2000 House Wildlife Resources

2000

HOUSE
WAYS & MEANS
COMMITTEE

MINUTES

House Committee on Ways and Means
1999-2000 Legislative Session

Rep. Martin L. Nesbitt, Chair
Room 2204 - 733-5872
Committee Assistant - Jan Lee

Membership

Rep. Gordon Allen
Room 530 LOB
733-5662

Rep. Dan Blue
Room 1227
715-2528

Rep. Jonie Bowie
Room 538 LOB
733-5877

Rep. Monroe Buchanan
Room 536 LOB
715-4946

Rep. Leslie Cox
Room 1221
733-5827

Rep. Michael Decker
Room 1021
733-5988

Rep. Rick Eddins
Room 1319
733-5800

Rep. Stan Fox
Room 1217
733-5757

Rep. Pryor Gibson
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715-3007

Rep. Phil Haire
Room 419B LOB
715-3005

Rep. Mary Jarrell
Room 2219
733-5749

Rep. Gene McCombs
Room 514 LOB
733-5881

Rep. Mickey Michaux
Room 1325
733-5772

Rep. Mia Morris
Room 1315
733-5741

Rep. Art Pope*
Room 539 LOB
733-5809

Rep. Pete Oldham
Room 403 LOB
715-3026

Rep. Bill Owens
Room 632 LOB
733-0010

Rep. Liston Ramsey
Room 2217
733-5606

Rep. David Redwine
Room 634 LOB
733-5829

Rep. Edgar Starnes
Room 617 LOB
715-9664

Rep. Scot Thomas
Room 531 LOB
733-5863

Rep. Edith Warren
Room 417A LOB
715-3019

Rep. Jennifer Weiss*$_2$
Room 2221
733-5781

Rep. Connie Wilson
Room 501 LOB
733-5903

COMMITTEE STAFF:

Kory Goldsmith
Room 545 LOB
733-2579

Jeff Hudson
Room 454 LOB
733-2578

***Appointed April 13, 1999 to Fill Rep. Neely's Seat after his resignation April 7, 1999.**
***2 Appointed November 19, 1999 to fill Rep. Mosley's Seat after her death.**

HOUSE COMMITTEE ON WAYS AND MEANS

1999-2000 Legislative Session



Rep. Martin L. Nesbitt, Chairman



Rep. Gordon Allen



Rep. Dan Blue



Rep. Joni Bowie



Rep. Monroe Buchanan



Rep. Leslie Cox



Rep. Michael Decker



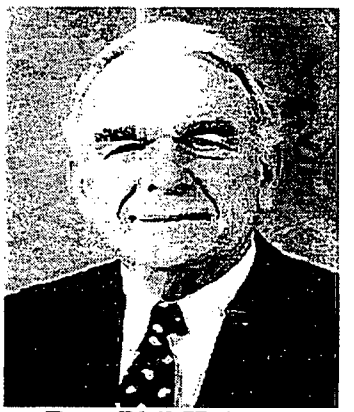
Rep. Rick Eddins



Rep. Stan Fox



Rep. Pryor Gibson



Rep. Phil Haire



Rep. Mary Jarrell



Rep. Gene McCombs



Rep. Mickey Michaux



Rep. Mia Morris



Rep. Pete Oldham



Rep. Bill Owens



*Rep. Art Pope



Rep. Liston Ramsey



Rep. David Redwine



Rep. Edgar Starnes



Rep. Scott Thomas



Rep. Edith Warren



Rep. Jennifer Weiss



Rep. Connie Wilson

ATTENDANCE

1999-2000 Legislative Session (2000 Session)

HOUSE COMMITTEE ON WAYS AND MEANS

DATES	5/31	6/6	6/7	6/14	6/20	6/21	6/21	6/22	6/27	6/28	6/28	6/29	6/30	7/11	
Allen, Gordon	EX	✓	✓	✓	✓			✓	✓	✓					
Blue, Dan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Bowie, Joni	✓		✓	✓	✓	✓					✓	✓	✓		
Buchanan, Monroe	✓	✓	✓	✓	✓	EX	✓		✓	✓	✓	✓	✓		
Cox, Leslie	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓				
Decker, Michael	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓			
Eddins, Rick	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓			
Fox, Stan	EX	✓	✓	✓		✓	✓		✓			✓	✓		
Gibson, Pryor	✓		✓	✓	✓	✓	✓	✓				✓			
Haire, Phil	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓			
Jarrell, Mary	✓				✓				✓						
McCombs, Gene		·	✓		✓	✓	✓	✓	✓	✓	✓	✓			
Michaux, Mickey	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓			
Morris, Mia	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		
Mosley, Jane (Died) Jennifer Weiss appointed	took	seat	-	-	-	-	-	-	-	-	-	-	-	-	-
Neely, Chuck(Resigned 4/7/99) Art Pope	took	seat	-	-	-	-	-	-	-	-	-	-	-	-	-
Oldham, Pete				✓	✓	✓	✓	✓			✓	✓			
Owens, Bill			✓	✓	✓	✓			✓		EX				
Pope, Art	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓			
Ramsey, Liston	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX	EX		
Redwine, David	EX	EX	EX	✓	EX	✓	✓	EX	EX	EX	EX	EX	✓		
Starnes, Edgar		✓	✓		✓					✓	✓				
Thomas, Scott	✓		✓	✓	✓	✓		✓	✓		✓	✓			
Warren, Edith	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		
Weiss, Jennifer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Wilson, Connie	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓				
Nesbitt, Martin, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Cunningham, Pete (Ex-Officio)									✓	✓	✓	✓			
Earle, Beverly (Ex-Officio)									✓		✓				
Baddour, Phil (Ex-Officio)											✓				

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — HOUSE: WAYS & MEANS — Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 238	NYE	INCREASED USE OF SERVICES OF DISABLE	R -CH. SL 99-0020	03-04-99	03-11-99
H 239	HAIRE	COMMUNITY COLLEGE PROPERTY TRANSFERS	*R -CH. SL 99-0115	03-04-99	04-01-99
H 253	OWENS	SIPS NAME CHANGE/IRMC	*R -CH. SL 99-0347	03-04-99	03-25-99
H 275	**REDWINE**	**ZERO ESC TAX/TRAINING CONTRIBUTION**	***R -CH. SL 99-0321**	**03-04-99**	**04-01-99**
H 276	REDWINE	OMNIBUS ESC CHANGES	R -CH. SL 99-0340	03-04-99	04-19-99
H 277	REDWINE	"FAMILY FRIENDLY" UI EXCEPTION	*R -CH. SL 99-0196	03-04-99	04-19-99
H 278	REDWINE	TANF SEPARATION NONCHARGED	*R -CH. SL 99-0421	03-04-99	04-26-99
H 283	ALLEN	STATE TREASURER'S INVESTMENT AUTHORI	*R -CH. SL 99-0251	03-04-99	04-19-99
H 291	BADDOUR	CHIEF OF NC GUARD	*R -CH. SL 99-0442	03-04-99	04-19-99
H 319	GOODWIN	ADD'L DUTY OF SEC. OF STATE	R -CH. SL 99-0316	03-04-99	03-17-99
H 326	CULPEPPER	AQUARIUM EXHIBIT DISPOSAL	*R -CH. SL 99-0049	03-04-99	03-25-99
H 327	CULPEPPER	FOOD/VENDING AT NC AQUARIUMS	S -RE-REF COM ON APPROPR	03-04-99	03-25-99
H 330	OWENS	N.C. WORKFORCE DEVELOPMENT	HF-POSTPONED INDEFINITELY	03-04-99	04-14-99
H 425	GRADY	DRIVERS LICENSE INFO NOT FOR SALE	H -RE-REF COM ON WAYS&MNS	03-30-99	
H 438	EDWARDS	HOUSING AUTHORITY EXEMPTION	*R -CH. SL 99-0409	04-20-99	04-23-99
H 454	ALLRED	SIMPLIFY BID PROCESS/CAP. PROJ.	HF-POSTPONED INDEFINITELY	03-16-99	
H 461=	REDWINE	RELEASE OF DMV INFORMATION	*S -REF TO COM ON COMMERCE	03-16-99	04-19-99
H 467=	MORGAN	USE OF SCHOOL BUSES/US OPEN	HF-POSTPONED INDEFINITELY	03-16-99	
H 470	DECKER	SUMMERFIELD COUNCIL REMOVAL	H -REF TO COM ON WAYS&MNS	03-17-99	
H 471	DECKER	AG USES/ZONING	*R -CH. SL 99-0057	03-17-99	04-26-99
H 525	ELLIS	PHONE SOLICITATIONS/CALLER ID	*S -REF TO COM ON INFOTECH	03-22-99	04-21-99
H 529	CAPPS	DISPLAY OF AMERICAN FLAG	*S -REF TO COM ON STLOCGVT	03-22-99	04-26-99
H 541	MITCHELL	PWC AMENDMENTS	*R -CH. SL 00-0052	00-06-19	
H 636	**OWENS**	**CONSUMER SERVICE QUALITY ASSURANCE**	**HF-POSTPONED INDEFINITELY**	**03-29-99**	**05-06-99**
H 671	**EDDINS**	**LEGISLATOR GUIDES**	**HF-POSTPONED INDEFINITELY**	**03-29-99**	**05-06-99**
H 820=	HENSLEY	VOLUNTARY SHARED LEAVE	*R -CH. SL 99-0170	04-01-99	04-22-99
H 821=	HENSLEY	RELOCATE NC GOVT. COMPETITION COMM.	S -REF TO COM ON STLOCGVT	04-01-99	04-07-99
H 843=	INSKO	MOORE COMMISSIONERS DISTRICTS	*HF-POSTPONED INDEFINITELY	04-01-99	04-27-99
H 885	LUEBKE	SELF-SERVE STORAGE/LATE PAYMENTS	*R -CH. SL 99-0416	04-01-99	04-21-99
H 898	MCALLISTER	CHILD BICYCLE SAFETY ACT	*S -REF TO COM ON JUDICII	04-20-99	04-27-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — HOUSE: WAYS & MEANS — Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 899	BRIDGEMAN	REAL ESTATE SALESMAN/BROKER LICENSUR	*R -CH. SL 99-0200	04-01-99	04-23-99
H 918=	MCLAWHORN	INCREASE DEATH BENEFITS	HF-POSTPONED INDEFINITELY	04-05-99	04-20-99
H 923=	BADDOUR	LEAVE/STATE EMPLOYEES	*S -RE-REF COM ON APPROPR	04-05-99	04-07-99
H 942	GOODWIN	CHILD PERFORMERS STUDY	*HF-POSTPONED INDEFINITELY	04-07-99	05-13-99
H 951	EDWARDS	TENANTS ON HOUSING AUTHORITY	*R -CH. SL 99-0146	04-08-99	04-23-99
H 964	JARRELL	MUNICIPAL INCORPORATION PROCESS	*R -CH. SL 99-0458	04-12-99	06-07-99
H 968	NESBITT	AMEND CONTESTED CASE PROCEDURE	*R -CH. SL 00-0190	04-12-99	04-22-99
H 983	WAINWRIGHT	PROPERTY TRANSFERS TO NONPROFITS	HF-POSTPONED INDEFINITELY	04-12-99	
H 984	WAINWRIGHT	ADVERTISEMENT OF STATE LEASES LTD.	HF-POSTPONED INDEFINITELY	04-12-99	
H 985	WAINWRIGHT	STATE LAND TRANSACTIONS	*R -CH. SL 99-0252	04-12-99	04-27-99
H 985	WAINWRIGHT	STATE LAND TRANSACTIONS	*R -CH. SL 99-0252	05-31-99	
H1000	**ALEXANDER**	**ADDICTION RESEARCH AUTHORITY**	**HF-POSTPONED INDEFINITELY**	**04-13-99**	**04-27-99**
H1051=	BADDOUR	EXTEND TRANSPARK INVESTMENT AUTHORIT	H -REF TO COM ON WAYS&MNS	04-14-99	
H1060	BUCHANAN	LEGISLATORS' LONGEVITY PAY	*HF-POSTPONED INDEFINITELY	04-15-99	05-20-99
H1071=	ALEXANDER	HANDICAPPED LAW CHANGES	*R -CH. SL 99-0160	04-15-99	04-27-99
H1076	COX	FIRE MAINS COMPLY WITH BUILDING CODE	*R -CH. SL 99-0123	04-15-99	04-23-99
H1092	HOWARD	SOCIAL WORKER IMMUNITY/DEFENSE	H -REF TO COM ON WAYS&MNS	04-15-99	
H1096	HILL	REGISTER OF DEEDS AMENDS	*H -RE-REF COM ON WAYS&MNS	05-12-99	
H1114	WRIGHT	ENHANCING EMERGENCY MEDICAL SERVICES	*HF-POSTPONED INDEFINITELY	04-15-99	06-10-99
H1120	WRIGHT	AUTHORIZE PUBLIC HOSPITAL DEBT	*R -CH. SL 99-0386	04-15-99	06-23-99
H1143	BUCHANAN	LEGISLATORS' PER DIEM/EXPENSES	HF-POSTPONED INDEFINITELY	04-15-99	05-27-99
H1145	MICHAUX	CLOSE LOOPHOLE MIN. HOUS. STAND - 2	H -REF TO COM ON WAYS&MNS	04-15-99	
H1149	JEFFUS	MODULAR CONSTRUCTION REQUIREMENTS	*S -REF TO COM ON COMMERCE	04-15-99	04-27-99
H1164	LUEBKE	ENERGY SAVINGS CONTRACTS STUDY	*HF-POSTPONED INDEFINITELY	04-15-99	05-27-99
H1173	MCCRARY	PERSONAL INFORMATION DISCLOSURES	*R -CH. SL 99-0446	04-15-99	04-27-99
H1195	ROGERS	SPECIAL NEEDS COMMISSION MODIFIED	HF-POSTPONED INDEFINITELY	04-15-99	04-27-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*R -CH. SL 99-0447	04-23-99	04-27-99
H1213=	ROGERS	SUNSET/ENERGY SAVINGS CONTRACTS	HF-POSTPONED INDEFINITELY	04-15-99	
H1437	**CAPPS**	**ADS FOR CAR REPAIRS/FUNDS**	**HF-POSTPONED INDEFINITELY**	**04-29-99**	**05-13-99**
H1515=	CHURCH	NCRR AMENDMENTS	H -REF TO COM ON WAYS&MNS	00-05-11	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — HOUSE: WAYS & MEANS — Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1534=	**NESBITT**	**AMEND STATE TORT CLAIMS LAW**	***HF-POSTPONED INDEFINITELY**	**00-05-16**	**00-05-31**
H1578=	TOLSON	INFORMATION TECHNOLOGY GOVERNANCE	*R -CH. SL 00-0174	00-05-18	00-06-22
H1594=	REDWINE	PROF ENGINEERS/SURVEYORS LICENSURE	H -REF TO COM ON WAYS&MNS	00-05-18	
H1595=	REDWINE	CODIFY TEMP. RULE EXCEPTIONS	*H -RE-REF COM ON WAYS&MNS	00-05-18	00-06-07
H1595=	REDWINE	CODIFY TEMP. RULE EXCEPTIONS	*H -RE-REF COM ON WAYS&MNS	00-06-15	
H1596=	REDWINE	APA TECHNICAL CHANGES	S -RE-REF COM ON JUDICII	00-05-18	00-05-31
H1597=	REDWINE	EXPAND APA OVERSIGHT	H -REF TO COM ON WAYS&MNS	00-05-18	
H1601=	GIBSON	PRIVATE COUNSEL/ATTY FEES/STATE EMP	H -REF TO COM ON WAYS&MNS	00-05-18	
H1611=	TOLSON	RURAL INTERNET ACCESS AGENCY	H -REF TO COM ON WAYS&MNS	00-05-18	
H1620	GOODWIN	ON-SITE WASTEWATER SYS CONTRACTORS	H -REF TO COM ON WAYS&MNS	00-05-18	
H1632=	GIBSON	FLOOD HAZARD PREVENTION ACT OF 2000	H -RE-REF COM ON ENVIRON	00-05-18	00-05-23
H1819=	**TOLSON**	**RURAL REDEVELOPMENT AUTHORITY**	***R -CH. SL 00-0148**	**00-05-30**	**00-06-14**
S 56=	LEE	SUNSET/TERM OF ENERGY SAVINGS CTRCT	*R -CH. SL 99-0235	04-23-99	05-27-99
S 108	MILLER B	SPECIAL OLYMPIC SCHOOL BUS USE	*R -CH. SL 99-0001	02-18-99	02-24-99
S 192	REEVES	FILING OF FOREIGN AGREEMENTS	*R -CH. SL 99-0260	04-13-99	06-17-99
S 212	RAND	MORTUARY SCIENCE CHANGES	*R -CH. SL 99-0425	04-29-99	07-01-99
S 255	ALBERTSON	STATE AGENCY TELEPHONE MENUS	R -CH. SL 99-0429	04-06-99	07-05-99
S 283	SHAW L	NC PURCHASING OPPORTUNITIES	*R -CH. SL 99-0417	04-27-99	07-08-99
S 284	SHAW L	SMALL BUSINESS PROCUREMENT REVIEW	*R -CH. SL 99-0407	04-08-99	07-08-99
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	04-27-99	06-23-99
S 370	BALLANCE	OSHA WITNESS STATEMENTS	*R -CH. SL 99-0364	04-28-99	07-01-99
S 385=	LEE	USE OF SCHOOL BUSES/US OPEN	*R -CH. SL 99-0176	04-27-99	06-07-99
S 515=	KERR	VOLUNTEER FIRE DEPT/RESCUE WORKERS	*R -CH. SL 99-0319	04-13-99	06-17-99
S 532	CARTER	ASHEVILLE CIVIL SERV. BD./ZONING REF	*R -CH. SL 99-0303	07-05-99	07-07-99
S 776	RAND	AMEND PURCH./CONTRACT EXEMPTIONS	*R -CH. SL 99-0368	04-27-99	07-08-99
S 796	HOYLE	GENERAL CONTRACTORS PROPERTY	R -CH. SL 99-0349	04-23-99	06-23-99
S 877	KERR	WORKERS' COMP./NATIONAL/STATE GUARD	*R -CH. SL 99-0418	04-28-99	07-05-99
S 927	KINNAIRD	BLIND SERVICES TECHNICAL CHANGES	*R -CH. SL 00-0121	04-27-99	06-07-99
S 927	KINNAIRD	BLIND SERVICES TECHNICAL CHANGES	*R -CH. SL 00-0121	06-14-99	00-06-22
S 934=	CARTER	HANDICAPPED LAW CHANGES	H -REF TO COM ON WAYS&MNS	04-27-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium | HOUSE: WAYS & MEANS | Valid Through 9-AUG-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 966	CLODFELTER	BUILDING INSPECTION CONTRACTS	*R -CH. SL 99-0372	04-28-99	07-07-99
S 979	CARTER	REPEAL PUBLIC SETTLEMENT RESERVE FUN	*H -REF TO COM ON WAYS&MNS	04-28-99	
S1004	KINNAIRD	GEOLOGIST LICENSURE	*R -CH. SL 99-0355	04-29-99	07-01-99
S1058	CLODFELTER	GENERAL CONTRACTORS LICENSURE	*R -CH. SL 99-0427	04-28-99	07-08-99
S1143	WARREN E	CONTRACTS CONTINUE/EURO. UNION	*R -CH. SL 99-0312	05-03-99	05-25-99
S1183=	DALTON	NCRR AMENDMENTS	*R -CH. SL 00-0146	00-06-20	00-06-30
S1284=	FOXX	APA TECHNICAL CHANGES	R -CH. SL 00-0189	00-06-05	00-06-30
S1316=	MILLER B	ENGINEERS/LAND SURVEYS LICENSURE	*R -CH. SL 00-0115	00-06-05	00-06-21
S1343=	REEVES	RURAL INTERNET ACCESS AUTHORITY	R -CH. SL 00-0149	00-06-15	00-06-28

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House Committee
on
Ways and Means

Minutes
May 31, 2000
Room 1228

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday, May 31, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Blue, Bowie, Buchanan, Cox, Decker, Eddins, Gibson, Haire, Jarrell, Michaux, Morris, Pope, Thomas, Warren, Weiss, and Wilson. Reps. Allen, Fox, Redwine and Ramsey had excused absences.

Chairman Rep. Nesbitt called the meeting to order and asked Rep. Blue to preside while Rep. Nesbitt explained **HB 1534 (Amend State Tort Claims Law)** to the Committee. A proposed committee substitute was handed out. *(See Attachment I)*

Discussion followed. Rep. Nesbitt explained that the bill would increase the State Tort Claim limit and State liability under the duty to defend State employees from a maximum of $150,000 to a maximum of $500,000. It provides for the funding of claims in excess of $150,000 through the State Excess Liability Fund. It also contains an appropriation of $2,640,000 to the State Excess Liability Fund.

Rep. Nesbitt explained that the bill was a study commission bill. The circumstance that caused the study commission grew out of an accident that occurred in Transylvania County in 1998 in which a State truck pulling a steamroller hit Kellie Crabtree's van, seriously injuring both Mrs. Crabtree and her daughter McKenzie. He explained how the Crabtrees suffered, how Mrs. Crabtree is permanently crippled and her daughter Mckenzie's leg has stopped growing. While the Crabtrees have experienced medical bills in excess of $500,000, they learned that due to sovereign immunity and the State Tort Cap limit, they could only recover $150,000 from the State of North Carolina. He said the study commission deliberately made the increase in the tort cap retroactive so that the Crabtrees would be covered.

Rep. Buchanan moved that the proposed committee substitute be adopted. The motion passed.

Discussion followed. Rep. Pope supported the bill.

Rep. Cox made a motion to give the committee substitute bill a favorable report and the original bill an unfavorable report and to re-refer the bill to the Appropriations Committee.

After discussion, Rep. Cox's motion passed.

The next bill before the Committee was **HB 1596 (APA Technical Changes)** sponsored by Rep. Redwine. *(See Attachment II)*

Committee Staff, Jeff Hudson, explained that the bill makes technical changes and repeals obsolete references to the Administrative Procedure Act.

Rep. Michaux moved to give the bill a favorable report and the motion passed.

The meeting adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

Adopted 5/31/00
Attachment I

DRAFT

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1534*
House Proposed Committee Substitute
H1534-PCSRC-001

Short Title: Amend State Tort Claims Law. (Public)

Sponsors:

Referred to: Ways and Means, if favorable, Appropriations.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT AND STATE LIABILITY UNDER THE DUTY TO DEFEND STATE EMPLOYEES LIABILITY AND TO PROVIDE FOR THE FUNDING OF STATE TORT LIABILITY CLAIMS IN EXCESS OF ONE HUNDRED FIFTY THOUSAND DOLLARS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-291(a) reads as rewritten:

"(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was ~~such~~ negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, ~~which~~ that was the

proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages ~~which~~ that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of ~~such~~ damages ~~by the department, institution or agency concerned,~~ as provided in subsection (a1) of this section, but in no event shall the amount of damages awarded exceed the ~~sum of one hundred fifty thousand dollars ($150,000)~~ amounts authorized in G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one ~~person.~~ person arising out of a single occurrence. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State."

Section 2. G.S. 143-291 is amended by adding a new subsection to read:

"(a1) The unit of State government that employed the employee at the time the cause of action arose shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid from the State Excess Liability Fund under G.S. 143-299.4."

Section 3. G.S. 143-291.3 reads as rewritten:

"**§ 143-291.3. Counterclaims by State.**

The filing of a claim under this Article shall constitute consent by the ~~plaintiff(s)~~ plaintiff to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of ~~one hundred fifty thousand dollars ($150,000)~~ the maximum amount authorized for a claim in G.S. 143-299.2 or less ~~which~~ that may be filed on behalf of a State department, ~~institution, or agency~~ institution or agency, or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the Clerk of the Superior Court of the county ~~wherein~~ where the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of ~~such~~ a counterclaim."

Section 4. G.S. 143-299.2 reads as rewritten:

"**§ 143-299.2. Limitation on payments by the State.**

(a) The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one ~~person,~~ person arising out of any one occurrence, whether the claim or

claims are brought under this ~~Article~~ Article, or Article 31A or ~~Article 31B, shall be one hundred fifty thousand dollars ($150,000),~~ Article 31B of this Chapter, shall be five hundred thousand dollars ($500,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c).

(b) The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

Section 5. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-299.4. State Excess Liability Fund.**

(a) Fund Established. -- There is established the State Excess Liability Fund as a nonreverting restricted reserve fund in the Office of State Budget and Management.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall not revert but shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Attorney General.

(c) Fund Purposes. -- Moneys from the Fund may be used only for the purpose of paying the balance of claims in excess of one hundred fifty thousand dollars ($150,000) per claim arising under this Article, or Article 31A or 31B of this Chapter, on account of injury or damage to any one person.

(d) Definition. -- For purposes of this section, the term 'Fund' means the State Excess Liability Fund."

Section 6. G.S. 143-300.1(c) reads as rewritten:

"(c) In the event that the Industrial Commission ~~shall make award of~~ awards damages against any county or city board of education ~~pursuant to~~ under this section, the Attorney General shall draw a voucher for the amount required to pay ~~such~~ the award. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim ~~vouchers written by the Attorney General~~ for claims against county and city boards of education for accidents involving school buses and school transportation service vehicles shall be made available from funds appropriated to the ~~Department of Public Instruction.~~ State Board of Education. The balance of any liability owed shall be paid from the State Excess Liability Fund under G.S. 143-299.4. Neither the county or city boards of education, or the

county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon ~~such~~ a voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295."

Section 7. G.S. 143-300.1(d) reads as rewritten:

"(d) The Attorney General may defend any civil action ~~which may be~~ brought against the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic when ~~such~~ the driver or mechanic is employed and paid by the local school administrative unit, when the monitor is acting in accordance with G.S. 115C-245(d), when the transportation safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an unpaid school bus driver trainee under the supervision of an authorized employee of the Department of Transportation, Division of Motor Vehicles, or an authorized employee of a county or city board of education or administrative ~~unit thereof.~~ unit. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in ~~such~~ the civil action not to exceed the limit provided under the Tort Claims Act. The funds necessary to cover the first one hundred fifty thousand dollars ($150,000) of liability per claim shall be made available from funds appropriated to the State Board of Education. The balance of any liability owed shall be paid from the State Excess Liability Fund under G.S. 143-299.4. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims ~~which~~ that would be within the jurisdiction of the Industrial Commission under the Tort Claims Act."

Section 8. G.S. 143-300.6(a) reads as rewritten:

"(a) Payment of Judgments and Settlements. In an action to which this Article applies, the State shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State employee or (ii) the amount due under a settlement of the action under this section. The unit of State government ~~by which~~ that employed the employee ~~was employed~~ shall ~~make the payment.~~ pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid from the State Excess Liability Fund under G.S. 143-299.4. This

section does not waive the sovereign immunity of the State with respect to any claim. A payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors may not exceed the amount payable for one claim under the Tort Claims Act."

Section 9. G.S. 143-300.16(a) reads as rewritten:

"(a) Any final judgment awarded against an employee in an action ~~which~~ that meets the requirements of G.S. 143-300.14, or any amount payable under a settlement of ~~such an~~ the action, shall be paid by the State. The first one hundred fifty thousand dollars ($150,000) of liability shall be paid from funds appropriated to the State Board of Education for the payment of State Tort Claims. The balance of any payment owed shall be paid from the State Excess Liability Fund under G.S. 143-299.4. ~~from the appropriation for the payment of State Tort Claims, except that no~~ No payment shall be made from ~~that appropriation~~ either funds appropriated to the State Board of Education or the State Excess Liability Fund for any judgment for punitive damages. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or authorize the payment of any judgment or settlement against a public school employee in excess of the limit provided in the Tort Claims Act."

Section 10. Notwithstanding the limitations of G.S. 143-291.3, for claims pending on the effective date of this act, any counterclaim made by the State under G.S. 143-291.3 shall not exceed the greater of one hundred fifty thousand dollars ($150,000) or the amount of the plaintiff's claim.

Section 11. There is appropriated from the General Fund to the State Excess Liability Fund the sum of two million six hundred forty thousand dollars ($2,640,000) for fiscal year 2000-2001.

Section 12. This act becomes effective July 1, 2000. Sections 1, 2, 4, 5, 6, 7, 8, 9, and 10 apply to claims or actions pending on or after the effective date. Section 3 applies to claims filed on or after the effective date.

5/31/2000

HOUSE BILL 1534:
Amend State Tort Claims Law

BILL ANALYSIS

Committee: House Ways & Means
Date: May 30, 2000
Version: H1534-PCSRC-001
Proposed Committee Substitute

Introduced by: Rep. Nesbitt
Summary by: Kory Goldsmith
Committee Counsel

SUMMARY: ***HB 1534 would increase the State Tort Claim limit and State liability under the duty to defend State employees from a maximum of $150,000 to a maximum of $500,000. It provides for the funding of claims in excess of $150,000 through the State Excess Liability Fund. It also contains an appropriation of ~~$3,640,000~~ $1,600,000 to the State Excess Liability Fund.***

CURRENT LAW: The State waived its sovereign immunity in 1951 with the passage of the "Tort Claims Act" which allows an injured person to recover damages from the State subject to the same defenses that might be available to a private individual. **Recovery is currently limited to a maximum of $150,000 of damages per individual.** The Attorney General's Office defends these claims on behalf of the State and has the authority to settle claims. If the claim is not settled the Industrial Commission adjudicates it, and appeals are heard by the Court of Appeals. Claims awarded to an injured person are paid by the agency that employed the negligent employee.

An injured person may also sue the State employee personally. Under the "Duty to Defend State Employees Act," the State may elect to defend an employee who commits a negligent act in the course and scope of his employment with the State. If the injured person is successful against the individual employee, the State pays the claim up to $150,000. The State also purchases excess liability coverage for certain types of negligent acts. Despite the excess liability coverage and the duty to defend statute, an injured person can never receive more than $150,000 from the State for one claim.

BILL ANALYSIS: Section 1 amends G. S. 143-291(a) to remove the current cap of $150,000 and establishes the cap instead by reference to the limitation authorized in G. S. 143-299.2, which is $500,000.

Section 2 amends G. S. 143-291 by adding a new subsection (a1) that provides that claims in excess of $150,000 shall be paid from the newly created State Excess Liability Fund. The first $150,000 of liability will continue to be paid by the unit of State government that employed the negligent employee.

Section 3 amends G. S. 143-291.3 to increase the maximum dollar amount for counter claims brought by the State against a plaintiff in a tort claims actions. The amount is increased from $150,000 to $500,000, the same amount authorized for a claim by the plaintiff.

Section 4 amends G. S. 143-299.2 to increases the maximum dollar amount for a claim brought under Articles 31 State Tort Claim, 31A Duty to Defend State Employees, or 31B Defense of Public School Employees. The amount is increased from $150,000 to a maximum of $500,000.

Section 5 creates a new section, G.S. 143-299.4 - the State Excess Liability Fund. The Fund is created to pay claims in excess of $150,000. The State Excess Liability Fund is non-reverting, with earnings credited to the assets of the fund.

Section 6 amends G. S. 143-300.1(c) regarding claims against school boards for accidents involving school buses or school transportation service vehicles. The changes make the statute conform to the new claim limit of $500,000 and payments from the new State Excess Liability Fund.

Section 7 amends G. S. 143-300.1(d) regarding the duty to defend school bus drivers, transportation safety assistants, and school bus monitors against claims for accidents involving school buses or school transportation service vehicles. The changes make the provision conform to the new claim limit of $500,000 and payments from the new State Excess Liability Fund.

Section 8 amends G.S.143-300.6(a) regarding the payment of judgments and settlements under Chapter 31A Duty to Defend State Employees. The changes make the provision conform to the new claim limit of $500,000 and the new State Excess Liability Fund.

Section 9 amends G. S. 143-300.16(a) regarding payment of judgments and settlements under Chapter 31B Defense of Public School Employees. The amendments make the statute conform to the new claim limit of $500,000 and the new State Excess Liability Fund.

Section 10 makes an uncodified clarification to G.S. 143-291.3 regarding State counter claims. HB 1534 increases the State's liability for damages and makes the change effective for claims **pending** on or after the effective date of the legislation. This means the bill has a retroactive effect. However, the State's ability to counterclaim for the increased amount would only apply to claims **filed** on or after the effective date. Because this difference could result in a plaintiff increasing his or her claim, but the State not being able to, Section 10 provides that for claims pending on the effective date, the State may counter claim for the greater of $150,000 or the amount of the plaintiff's claim.

Section 11 appropriates $2,640,000 from the General Fund to the State Excess Liability Fund for FY 2000-2001.

The bill is effective when it becomes law. Sections 1, 2, 4, 5, 6, 7, 8, 9, and 10 are retroactive and apply to claims pending on or after the effective date. Section 3 applies to claims filed on or after the effective date, except as provided in Section 10 explained above.

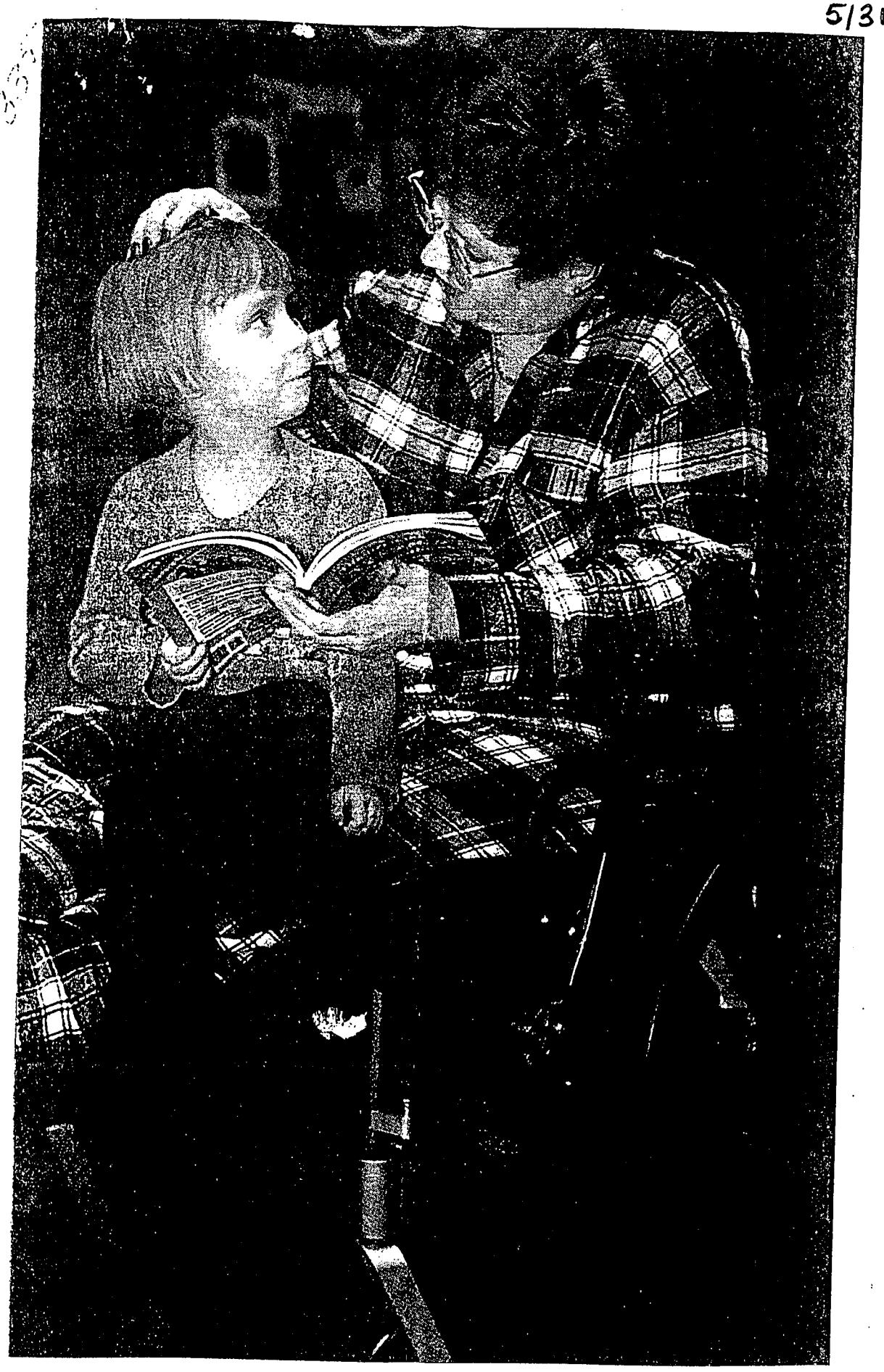
BACKGROUND: This bill comes as a recommendation of the Legislative Research Commission, at the recommendation of the State Tort Liability and Immunity Committee.

H1534-SMRC-001(House PCS)

Wendy Graf, Staff Attorney to the Research Division, contributed substantially to the summary.

5/31/2000

the Charlotte Observer 3-10-00



Photos by GAYLE SHOMER/Staff

Kellie Crabtree reads a bedtime story with her daughter, McKenzie, while relaxing after dinner at home. More than a year after a state-owned truck hit a van carrying Crabtree and McKenzie, both are still suffering from injuries. Two lawmakers are set to write legislation that would increase – from $150,000 – the amount the state pays for wrongful acts.

N.C. looks to raise cap on payments for harm

By DIANE SUCHETKA
Staff Writer

RALEIGH — Two lawmakers will begin writing a bill that would allow North Carolina to pay more than the current maximum – $150,000 – to anyone seriously injured by the state.

And both legislators say the draft will likely raise the maximum the state can pay those it harms to $500,000. That amount or higher is paid by 20 states, according to data compiled by the N.C. Academy of Trial Lawyers.

South Carolina pays up to $300,000 for tort, or wrongful act, claims. But under N.C. law, no one can get more than $150,000 from the state, even if his or her medical bills climb into the millions of dollars as a result of harm caused by North Carolina.

The lawmakers drafting the bill hope to introduce it to the full legislature in the next session, which begins in May.

"I'm guardedly optimistic,"Rep. Trudi Walend, R-Transylvania, said after Thursday's meeting of the study committee.



The Crabtree family – Steve (from top), Jacob, 8, Kellie and McKenzie, 4 – has faced medical bills topping $500,000 since Kellie and McKenzie were struck by a state-owned vehicle.

"I feel like the committee is very responsive to do the right thing," said Walend, a member of the study committee, who sponsored a similar bill last year. She did not expect the cap to go as high as $500,000, the figure most often discussed at Thursday's meeting.

Walend is especially interested in the law because one of her constituents, Kellie Crabtree, was hit head-on in 1998 by an N.C. employee driving a state-owned dump truck. Crabtree, 33, of Quebec, N.C., spent 13 days in the hospital recovering from the accident and three surgeries.

The accident also broke her daughter's leg. McKenzie Crabtree, now 4, faces surgery to try to repair her left leg, which has stopped growing as a result of the accident. Doctors told the Crabtrees the surgery has a 10 percent chance of success.

The family's medical bills have topped $500,000 and continue to climb. They have health insurance that covers some expenses. But their policy requires them to pay back the insurance company with any money they receive in a settlement.

Please see **INJURY** */ page* **7B**

The state has acknowledged it was at fault in the accident.

If the cap is raised to $500,000, it is expected to cost the state an additional $3 million a year, a small percentage of the state's $13 billion budget.

Walend and other members also were encouraged after representatives of the N.C. attorney general's office and the state Department of Insurance told the committee they would not oppose raising the limit.

But Walend would not predict how the bill might do before the full legislature.

"When people learn about it, all their compassionate, caring feelings come out and they say, 'We need to take care of this.' "

Legislators at Thursday's meeting said they'd also like to find a way to ensure that the injured person keeps some of the money paid by the state instead of using every penny to reimburse insurance companies.

"They're going to continue to have medical bills," said Rep. Martin Nesbit, D-Buncombe, who will co-author the draft bill. "They're going to continue to lose wages. They're going to continue to have pain and suffering. We want to make sure they have something."

Sen. Brad Miller, D-Wake, the other author, also said he wants to see the state work to improve driver safety so accidents can be prevented.

"I really want to see the state act responsibly and safely. I don't want to hear another compelling story like Kellie Crabtree's," he said.

Reach Diane Suchetka at (704) 358-5073 or suchetka@charlotteobserver.com.

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THE CHARLOTTE OBSERVER

N.C. PAYMENTS FOR INJURIES DON'T COME CLOSE TO NEEDS

WOMAN HIT BY STATE DUMP TRUCK WORKS TO RAISE LIABILITY LIMITS

Tuesday, February 1, 2000
Section: MAIN
Edition: THREE TWO
Page: 1A
Illustration: Photo-2

By DIANE SUCHETKA, Staff Writer

Kellie Crabtree was on her way home from the Wal-Mart, a mile and a half from her house, when a dump truck crossed the centerline and slammed into her van.

Her stack of medical bills is half a million dollars high and climbing.

But the owner of the truck - the state of North Carolina - won't pay her more than $150,000.

Under state law, that is the maximum North Carolina pays, no matter how much damage it causes or how much harm it does.

From her wheelchair, the soft-spoken mother of two is battling those limits. This week, she goes to Raleigh to make her point to a group of legislators considering a change in the law.

"I feel like we were not victims once - when we were hit - but we've become victims over and over again at the hands of the state," said ***Crabtree***.

On Nov. 12, 1998, ***Crabtree*** offered to pick up a friend whose car was in the shop. They ate breakfast with their two preschool children, ran errands and shopped until the car was ready.

With her friend driving in a car behind her, ***Crabtree*** chugged up a mountain road near her Transylvania County home, 90 miles west of Charlotte.

The last thing she remembers before the crash was looking in the rearview mirror at her daughter, McKenzie, and her friend's son, asleep in the back seat.

As it was reconstructed later, a state Department of Transportation dump truck pulling a steamroller on a trailer crossed left of center and hit ***Crabtree's*** van.

One of her next memories is of her friend Michelle McCall, who watched the accident unfold, standing at the van door, asking ***Crabtree*** if she was OK.

Crabtree felt no pain, just heat from her waist to her toes. In the back, the two children were awake and crying.

A helicopter flew ***Crabtree*** to a hospital in Asheville, another took her on to Charlotte.

She rattles off her injuries now, 18 items long, head to toe:

Chin sliced. Left arm broken. Ribs cracked. Left lung partially deflated. Right thumb snapped. Left hip crushed, right hip fractured, both hips dislocated. Pelvis broken. Left femur shattered, right femur split. Right kneecap pulverized. And on and on until she gets to the end: right foot nearly severed.

The children weren't hurt as badly. McCall's 14-month-old son went home from the hospital the next day with two black eyes.

Doctors in Asheville pinned together the broken leg of ***Crabtree's*** daughter, who was only 2.

Three surgeries and 13 days later, ***Crabtree*** herself rode home in an ambulance. Friends had built a wheelchair ramp to her front door so she could be rolled inside to the hospital bed set up in the den.

Nurses' aides brought medicine, spooned food into her mouth, bathed her, brought the bedpan. At first an ambulance took her back to Charlotte every month for doctor's visits. And she returned last February for more surgery. This time, doctors grafted bone from her hip to a break in her arm that would not heal.

Church members filled her refrigerator and ***Crabtree's*** father quit work for months to help take care of her.

Eventually, ***Crabtree*** recovered enough to use a wheelchair, but she couldn't go out for long because she couldn't put enough weight on her legs to stand up and use a restroom.

Nine months after the accident, she graduated to a four-prong cane and her own bed.

"And I will never take anything for granted again," ***Crabtree*** says. "The fact that I can go to the bathroom by myself now is remarkable."

She is covered by her husband's insurance, which pays some of the bills. Friends have helped with some of the others.

But the ***Crabtrees'*** policy has limits.

It did not cover home care, for example, until they filed a complaint. And the policy says that if they get any money in a settlement, the insurance company can collect what it has paid so far.

A drawer in their living room is filled with medical bills. The first one that came, from Carolinas Medical Center, was for $95,000.

More come each week.

"Not three weeks ago, I got a call saying that if we didn't pay $7,500 within three weeks, they were going to put it on our credit report where it would stay for seven years," ***Crabtree*** says.

"The same day, I got another that said if we didn't pay $400, they were going to turn it over to our credit report. From someone else we got another saying that if we didn't pay $3,000 and some

dollars, they'd turn that over to a collection agency.

"And that was within one week's time. It's horrible. It's embarrassing. It can really deflate your pride."

Woody Connette is a Charlotte attorney who handles claims for injured motorists.

"If that dump truck had belonged to a private business," Connette says, "it would be quite common to find that the business has at least $1 million of coverage and sometimes more."

And, in personal injury cases, he says, victims often collect enough money to cover medical bills and more for pain and suffering and lost wages.

At 11 a.m. Wednesday, ***Crabtree*** is scheduled to go before a group of state legislators in Raleigh and tell her story: how she was crippled in the accident, how the truck driver pleaded guilty to driving left of center and paid $136 to the court, how one of her daughter's legs is shorter than the other because of the accident, how collection agencies keep calling about the bills.

And how the state of North Carolina is shielded by the rule of sovereign immunity and state law, which says that the maximum the state is liable for in such a case is $150,000.

States have voted limits for years as a way to protect themselves and their citizens from a drain on public treasuries. But over the last decade, many states have either limited or abolished the defense of sovereign immunity.

Only three states limit anyone from suing them at all - Alabama, Arkansas and West Virginia - according to the most recent data compiled by the National Conference of State Legislatures in Denver.

Thirty-eight states set limits on the amount of money they will pay to people who are injured, a conference spokesman says. And North Carolina's limit is among the lowest.

South Carolina, for example, pays a maximum of $300,000 per person, $600,000 per incident.

That's the way it ought to be, says John McCabe, the Raleigh lawyer the ***Crabtrees*** hired to help them with their case.

McCabe points to the public attention on astronomical jury awards to people who have been injured, like the woman burned by McDonald's coffee some years ago.

"Take this case and look at the other side of it now," he says, "where you have a person, a young vibrant person, whose life is now completely changed and altered and she can't even get her medical bills paid.

"It's a shame. And we haven't even talked about its effect on her ability to work, which has been destroyed.

"And, God bless her, she hasn't focused on it. She's said, `John, I'm just grateful I'm alive.' "

Some lawmakers are sympathetic to the ***Crabtrees***. Rep. Martin Nesbitt, D-Buncombe, says N.C. lawmakers should increase the limit. "I think one of the biggest criticisms of government is that they pass laws and then exempt themselves from them," he says.

N.C. law says vehicles weighing more than 26,000 pounds must carry at least $750,000 in liability insurance. But state-owned vehicles are exempt.

"It's certainly difficult to explain to people that the state should be immune from liability when the average citizen is not," Nesbitt says.

"It doesn't matter if it's a dump truck that hits you or a school bus that overturns or a millionaire in a Cadillac. If you're hurt and injured and you have medical bills, you've got to pay those bills."

Nesbitt says he's sure some legislators will oppose the bill. One reason could be its cost.

Increasing the amount the state could pay to $300,000 could cost about $2.3 million a year in higher insurance premiums and payments to people like ***Crabtree***.

That's a fraction of the state's total $13 billion budget, but North Carolina already faces an estimated half-billion-dollar shortfall for next year, thanks to tax cuts, hurricane relief and increased spending.

The bill the legislature is considering now, if passed, could cost an additional $2 million a year the first few years because it would cover cases not yet settled.

"There will be some small cost to this," Nesbitt says. "But in my opinion it will be minimal."

If Steve ***Crabtree*** is at work and ***Kellie*** is left to get McKenzie and Jacob, 8, and herself ready for the day, it takes three hours.

Steve grocery shops after working all day as a mechanical maintenance man.

Kellie Crabtree, a former dental receptionist, can cook from her wheelchair. And she does nearly every day, wheeling herself up to the sink, pulling herself up against it if she needs to reach into a cupboard, then sitting right back down.

There are no more family hikes in the mountains. And no more sledding with the children.

"Although they do give me very important jobs," ***Crabtree*** says. "I get to be the camera woman now, so I don't feel left out."

The doctors say that McKenzie Crabtree's leg was broken in the growth plate and it may not grow again.

She is 4.

"It's really hard to see your child suffer," Crabtree says, as her voice trails off and she turns her face away.

"I wouldn't want anybody else to be faced with this."

LIMITS ON DAMAGES

Sovereign immunity means governments can't be sued unless they agree to it. In most cases, states limit the amount of damages that can be awarded:

NORTH CAROLINA: $150,000

SOUTH CAROLINA: $300,000

ARKANSAS, WEST VIRGINIA, ALABAMA: $0

Reach Diane Suchetka at (704) 358-5073 or suchetka@charlotteobserver.com .

Staff photo(s) by GAYLE SHOMER: 1. Kellie Crabtree and her 4-year-old daughter McKenzie are still suffering from injuries sustained a year ago when a state-owned truck hit their van. Crabtree uses a wheelchair around the house because it's difficult to stand up for long periods. 2. Kellie Crabtree, 33, (left) works near her son, Jacob, 8, at the kitchen counter of their home. More than a year after a state-owned truck hit Crabtree and her daughter, McKenzie, 4, both are still suffering from injuries. Crabtree uses a wheelchair around the house because she can't stand up for very long.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1596*

Short Title: APA Technical Changes. (Public)

Sponsors: Representatives Redwine; and Barefoot.

Referred to: Ways and Means.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVISE OBSOLETE STATUTORY REFERENCES TO VARIOUS ADMINISTRATIVE PROCEDURE ACT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the ~~hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 2. G.S 15A-1376 reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Post-Release Supervision and Parole Commission must adopt ~~regulations~~ rules governing the ~~hearing and must file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 3. G.S. 15B-6(a)(1) reads as rewritten:

"(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article ~~2~~ 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;".

Section 4. G.S. 90-88(d) reads as rewritten:

"(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes ~~places [place]~~ place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by ~~G.S. [Chapter]~~ Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a ~~substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B.~~ substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to ~~G.S. [Chapter] 150B~~ Chapter 150B of the General Statutes within 180 days of its decision to object."

Section 5. G.S. 90-116 reads as rewritten:

"**§ 90-116. Board of Examiners in Optometry.**

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article ~~2,~~ 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term."

Section 6. G.S. 90-140 reads as rewritten:

"**§ 90-140. Selection of chiropractic members of Board.**

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article ~~2~~ 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo."

Section 7. G.S. 90-223(b)(1) reads as rewritten:

"(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule ~~promulgated or amended~~ adopted under this Article shall ~~be filed and distributed in accordance with the provisions of Article 5 of Chapter 150B of the General Statutes of North Carolina. A copy must~~ be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board."

Section 8. G.S. 113-55.2(a) reads as rewritten:

"(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Secretary may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement

officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Secretary within the requirements of this section. These criteria are exempt from Article ~~2~~ 2A of Chapter 150B of the General ~~Statutes but shall be filed in accordance with Article 5 of that Chapter.~~ Statutes."

Section 9. G.S. 113-221(e1) reads as rewritten:

"(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.

The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of ~~Articles 2 and 5~~ Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

Section 10. G.S. 113-275(a1) reads as rewritten:

"(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article ~~2~~ 2A of Chapter 150B of the General Statutes. ~~Notwithstanding the provisions of G.S. 150B-59(a), the~~ The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission."

Section 11. G.S. 113A-115(a) reads as rewritten:

"(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this

section are in addition to the hearing required by Article ~~2~~ 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby."

Section 12. G.S. 130A-309.29 reads as rewritten:

"**§ 130A-309.29. Adoption of rules.**

The Commission may adopt rules to implement the provisions of this Part pursuant to Article ~~2~~ 2A of Chapter 150B of the General Statutes."

Section 13. G.S. 130B-8(a)(8) reads as rewritten:

"(a) Neither the Commission nor any contractor performing services on behalf of the Commission shall be subject to the following provisions of the General Statutes:

. . .

(8) Article ~~2~~ 2A of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14."

Section 14. G.S. 150B-1(d)(2) is repealed.

Section 15. Effective dates. Section 14 of this act is effective July 1, 2000. The remainder of this act is effective when it becomes law.

HOUSE BILL 1596:
APA Technical Changes

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Redwine
Date:	May 31, 2000	**Summary by:**	Jeff Hudson,
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1596 makes technical changes and repeals obsolete references to the Administrative Procedure Act (APA).

BACKGROUND AND BILL ANALYSIS:

House Bill 1596 is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

Sections 1-13

Former Article 2 of the APA governed the rule-making process agencies must follow. Article 2 was repealed in 1991, but references to Article 2 remain in the General Statutes. Under the current APA, rule-making procedures are contained in Article 2A of the APA. House Bill 1596 replaces references to Article "2" with "2A".

Former Article 5 of the APA governed effective dates and publication of agency rules. Article 5 was repealed in 1991, but references to Article 5 remain in the General Statutes. House Bill 1596 repeals the obsolete references to Article 5.

SECTION(S)	EXPLANATION
1-2	Delete references to Article 5 in the Post-Release Supervision and Parole Commission statutes.
3	Replaces Article "2" with "2A" in the Crime Victims Compensation Commission statutes.
4	Deletes reference to Article 5 in the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services statutes and makes other technical changes.
5	Replaces Article "2" with "2A" in the Board of Examiners in Optometry statutes.
6	Replaces Article "2" with "2A" in the Board of Chiropractic Examiners statutes.
7	Deletes reference to Article 5 and makes clarifying changes to the Board of Dental Examiners statutes.
8	Replaces Article "2" with "2A" and deletes reference to Article 5 in statutes governing issuance of warning tickets for violations of forestry laws.
9	Replaces Article "2" with "2A" and deletes reference to Article 5 in the statutes governing issuance of marine fisheries proclamations.
10	Replaces Article "2" with "2A" and deletes a reference to a statute contained in Article 5 in Wildlife Resources Commission statutes.

Note: Mary Shuping, Committee Staff to the Joint Legislative Administrative Procedure Oversight Committee, contributed to the preparation of this summary.

SECTION(S)	EXPLANATION
11	Replaces Article "2" with "2A" in Coastal Resources Commission statutes.
12	Replaces Article "2" with "2A" in Commission for Health Services statutes.
13	Replaces Article "2" with "2A" in Hazardous Waste Management Commission statutes.

Section 14. Section 14 repeals the provision that exempted the NC Low-Level Radioactive Waste Management Authority from Article 2A of the APA. Pursuant to S.L. 1999-357, the statutes establishing the Authority will be repealed July 1, 2000.

EFFECTIVE DATE: Section 14 is effective July 1, 2000. The remainder of the act is effective when it becomes law.

Note: Mary Shuping, Committee Staff to the Joint Legislative Administrative Procedure Oversight Committee, contributed to the preparation of this summary.

HOUSE COMMITTEE
ON
WAYS AND MEANS

Agenda
May 31, 2000

Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

HB 1534	Amend State Tort Claims Law (Nesbitt)
HB 1594	Professional Enginers/Surveyors Licensure (Redwine)
HB 1595	Codify Temp. Rule Exceptions (Redwine)
HB 1596	APA Technical Changes (Redwine)
HB 1597	Expand APA Oversight (Redwine)

ADJOURNMENT

VISITOR REGISTRATION SHEET

WAYS & MEANS — Name of Committee

5/31/00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CARL Goodwin	DSP
Evelyn Hawthorne	UNC-CH
Emily Meeker	CCNC
Charles Craver	NCATL
Molly Diggins	Sierra Club
Nat Mund	CCNC
Rommy	NOMOZ
Hanna DeVito	DENR
Jim Beeson	Prof. Soil Scientists
Joe Kleiss	NC Board for Licensing of Soil Scientists
Lisa Finch	NC Sierra Club
Sandra Long	Martin Marietta
Dan M'Lawhorn	DENR
D	
George Everett	Duke Energy
Christy Earnhardt	NCATL
[illegible]	NCLA
Sona Shandilya	NCCADV
Jerry CARTER	NC Bd. of Engs. & PLS
Melissa Lovell	DOJ
Lily Faul	DHHS
Bynette Hollum	DHHS
Harry Bunting	AG
[illegible]	NCCADV
[illegible]	Kennedy Covington
[illegible]	CEC/NC
Lisa Martin	Upper Neuse River Basin Assn.
BRUCE THOMPSON	CEC/NC

VISITOR REGISTRATION SHEET

Ways & Means — 5/3/00
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy D. Bain	NC Medical Society
Stephen W. Rose	" " "
Fabrice Rowley	NCACC
Marchese Rogers	NCDOT
Jack Cogdell	CEC - NC
Mary Faulkner	Ruston & Wms
[illegible]	DOR
Mike Mann	NC State AFL-CIO
Roz Smith	NCCCC
Pam Ramquist	NCAWA
Becky Stroh	PDAP
Butch Dumpeth	NCSBA
Patricia A. Yeager	[illegible]
Greg Owens	ACLU
Robert Hensley	ACLU-NC

House Committee
on
Ways and Means

Minutes
June 6, 2000
Room 1228

The House Committee on Ways and Means met at 12:00 noon on Tuesday, June 6, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Buchanan, Decker, Eddins, Fox, Haire, Michaux, Morris, Pope, Starnes, Warren, Weiss, and Wilson. Reps. Ramsey and Redwine had excused absences. Rep. Nesbitt, Chairman, presided.

HB 1595 (Codify Temp. Rule Exceptions), sponsored by Rep. Redwine, was before the Committee. *(See Attachment I)*

Committee Staff, Kory Goldsmith, explained that the bill would implement a recommendation of the Joint Legislative Administrative procedure Oversight Committee to codify the temporary rule-making authorities contained in session law and statutes other than G. S. 150B-21.1 of the Administrative Procedures Act (APA). *(See Attachment II)*

There was discussion about agencies adopting temporary rules and how long temporary rules could stay in place. Temporary rules are currently not subject to APA. Mary Shuping from the Research Division participated in the discussion.

Rep. Blue moved to amend the bill and the amendment was adopted. Kory Goldsmith explained that this is a technical amendment. *(See Attachment III)*

Rep. Nesbitt explained that the Administrative Procedure Oversight Committee was presented information showing a large increase in the number of temporary rules adopted by agencies over the pat year. The average number of temporary rules had risen from approximately 235 temporary rules per year for the 12/92-11/98 to 661 temporary rules for the period 12/98-11/99.

The Committee also found that since 1995, numerous agencies have received various types of expanded temporary rule-making authority. Five of these expanded authorities have been codified in the APA, five have been codified in the agencies' substantive statutes, and the remainder are contained in uncodified session law. There, in order to ensure that all exceptions to temporary rule making are contained in one place in the General Statutes, the Committee recommended that these provisions be codified in the APA.

After Committee discussion, Rep. Wilson moved to have the bill as amended made into a committee substitute, give the committee substitute a favorable report, the original bill an unfavorable report. The motion passed.

HB 1819 (Rural Redevelopment Authority Funds) *(See Attachment IV)* was before the Committee for consideration. Rep. Joe Tolson, the bill sponsor, was recognized to explain the bill.

He presented a proposed committee substitute to the Committee and Rep. Michaux moved that it be adopted. He said the bill simply sets up an authority to handle funds that come in from private areas to help develop rural areas of the State. He said the proposal comes as a recommendation of the Rural Prosperity Task Force. The funds could be used for infrastructure, industrial park, or anything that would make industry come into the area. Some of the money will come from the MCNC.

Rep. Wilson wondered if the authority created by this bill would be subject to laws of other State agencies? Would it be subject to APA and the open meetings law?

Rep. Nesbitt said that the bill should be changed to make it subject to APA. Also, by making this Authority a "body politic," does this bill give them taxing power? Martha Harris from Legislative Research Division that a taxing authority would have to be granted by Statute, but Rep. Nesbitt felt that the bill should specifically say that it did not have taxing or condemnation powers.

Rep. Pope was concerned about powers granted under G.S. 158-7.1.

Rep. Tolson said that Secretary Rick Carlyle from the Department of Commerce was available to answer questions. Secretary Carlyle spoke in favor of the bill.

Rep. Blue had questions about the "Removal of Board Member" authority and wondered if all of that power shouldn't be vested in one person, the Governor.

Considerable discussion followed and the bill was carried over to the next meeting.

The meeting was adjourned at 1:00 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1595*

Short Title: Codify Temp. Rule Exceptions. (Public)

Sponsors: Representatives Redwine; and Barefoot.

Referred to: Ways and Means.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO CODIFY AND CROSS-REFERENCE PROVISIONS OF THE GENERAL STATUTES AND SESSION LAWS GRANTING TEMPORARY RULE-MAKING AUTHORITY TO VARIOUS AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. -- An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A federal regulation.

(5) A court order.

(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

(7) The need for the Division of Medical Assistance, Department of Health and Human Services, to administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5.
(8) A finding by the Department of Health and Human Services that rules are necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse.
(9) The provisions of G.S. 143-215.1B(c).
(10) The provisions of G.S. 130A-125(b1).
(11) The provisions of G.S. 108A-27(c).
(12) The provisions of G.S. 143B-289.52(e).
(13) The provisions of G.S. 113-291.2(a1), provided nothing contained in this subsection shall supersede the public notice requirements contained in G.S. 113-291.2(a1).
(14) Until July 1, 2005, the Coastal Resources Commission, when adopting temporary rules governing coastal energy facilities.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

(1) No wake zones;
(2) Hunting or fishing seasons;
(3) Hunting or fishing bag limits;
(4) Management of public game lands as defined in G.S. 113-129(8a).

When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(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.

(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.

(a4) Notwithstanding the provisions of subsection (a) of this section, the Secretary of Commerce may adopt temporary rules to implement the information technology procurement provisions of Part 16 of Article 10 of Chapter 143B 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.

(a5) Notwithstanding the provisions of subsection (a) of this section, the State Board of Elections may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

(1) In accordance with the provisions of G.S. 163-22.2.

(2) To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

(3) The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

When the State Board of Elections adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(a6) Notwithstanding the provisions of subsection (a) of this section and Section 8.6 of S.L. 1997-458, until July 1, 2001, the Environmental Management Commission may adopt temporary rules to protect water quality standards and uses as required to implement basinwide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-282. Prior to the adoption of a temporary rule under this subsection, the Commission shall:

(1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.

(2) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.

(3) Hold a public hearing on the proposed temporary rule in the river basin to which the proposed temporary rule applies.

(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) S.L. 1998-212, Section 9.1(e), relating to Driving Education Certificates.

(2) S.L. 1997-400, Section 6.10, relating to the Fisheries Reform Act of 1997.

(3) S.L. 1998-225, Section 5.3, relating to amendments to the Fisheries Reform Act of 1997.

(4) S.L. 1997-507, Section 8, relating to Dropout Prevention/Drivers License.

(5) S.L. 1999-463 ES, Section 4, relating to the Hurricane Floyd Recovery Act of 1999. Any agency that adopts a temporary rule pursuant to this subdivision shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule.

(b) Review. -- When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules

may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a) or (a1) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) or (a1) of this section and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. ~~A~~ Except as provided in subsection (d1) of this section, a temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(d1) Notwithstanding the provisions of subsection (d) of this section, the following expiration dates shall apply:

(1) Temporary rules adopted to implement G.S. 143-215.94V, as enacted by Section 1 of Chapter 377 of the 1995 Session Laws, may remain in effect until the Environmental Management Commission adopts permanent rules, and

(2) Temporary rules adopted to implement the Hurricane Floyd Recovery Act of 1999, (S.L. 1999-463 ES, Section 4) shall specify the date on which the rule will expire and shall continue in effect until that date.

(e) Publication. -- When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule if the permanent rule is substantially the same as the published temporary rule, unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule."

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

Attachment II

HOUSE BILL 1595:
Codify Temporary Rule Exceptions

BILL ANALYSIS

Committee:	House Ways & Means	**Introduced by:**	Representative Redwine
Date:	May 30, 2000	**Summary by:**	Kory Goldsmith
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would implement a recommendation of the Joint Legislative Administrative Procedure Oversight Committee to codify the temporary rule-making authorities contained in session law and statutes other than G.S. 150B-21.1 of the Administrative Procedures Act (APA).***

CURRENT LAW: G.S. 150B-21.1(a)of the APA provides for the adoption of temporary rules without prior public notice or comment only in the following circumstances:

- A serious and unforeseen threat to the public health, safety, or welfare.
- The effective date of a recent act of the General Assembly or the U.S. Congress.
- A recent change in federal or State budgetary policy.
- A federal regulation.
- A court order.
- The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

Temporary rules are reviewed by an administrative law judge (ALJ) in the Office of Administrative Hearings (OAH) to ensure that the agency's need for the temporary rule meets at least one of the above-cited criteria. The rule is *not* reviewed for statutory authority, clarity, and necessity. Temporary rules may become effective within 24 hours. Finally, if an ALJ objects to the temporary rule, the agency may file the temporary rule over that objection.

When agencies adopt temporary rules, they are required to begin the permanent rule-making process. In order for a temporary rule to remain in effect until the permanent rule becomes effective, the agency must submit the permanent rule to the Rules Review Commission within 270 days. Failure to do so results in the expiration of the temporary rule.

G.S. 150B-21.1 also contains provisions that allow certain agencies to adopt temporary rules using abbreviated notice and hearing procedures.

BILL ANALYSIS: HB 1595 would codify in G.S. 150B-21.1 all existing and currently effective temporary rule-making provisions. A section-by-section explanation of these provisions is attached. **NOTE: All of these provisions are contained in current law. This bill does not modify any agency's existing temporary rule-making authority by expanding, limiting, or adding any new authority to adopt temporary rules.**

BACKGROUND: At its March 16, 2000 meeting, the Administrative Procedure Oversight Committee was presented with information showing a large increase in the number of temporary rules adopted by agencies over the past year. The average number of temporary rules had risen from approximately 235 temporary rules per year for the period 12/92 – 11/98 to 661 temporary rules for the period 12/98 – 11/99.

The Committee also found that since 1995, numerous agencies have received various types of expanded temporary rule-making authority. Five of these expanded authorities have been codified in the APA, five have been codified in the agencies' substantive statutes, and the remainder are contained in uncodified session law. Therefore, in order to ensure that all exceptions to temporary rule making are contained in one place in the General Statutes, the Committee recommended that these provisions be codified in the APA.

H1595-SMRC-001
Mary Shuping contributed substantially to this summary and attached table.

Section-by-Section Analysis
HB 1595 – Codify Temporary Rule Exceptions

Section 1.

AMENDS G.S. 150B-21.1(a) TO ADD NEW SUBDIVISIONS (7-14)	ADDITIONAL BASES FOR ADOPTING TEMPORARY RULES *Analysis:* Gives agency an additional basis for the adoption of a temporary rule, other than those found under G.S. 150B-21.1(a)(1-6). The APA procedures for adoption of the temporary rule, its effective date and expiration date apply to any of these temporary rules.	CURRENTLY FOUND UNDER
(a)(7) (a)(8)	**DHHS/Division of Medical Assistance:** Allows DHHS to adopt temporary rules to administer the federal Medicaid estate recovery program. Allows DHHS to adopt temporary rules to maximize the receipt of federal funds,	**S.L. 99-237 (These provisions have been included in the Appropriations Act since 1995.)**
(a)(9)	**DENR/Environmental Management Commission** Allows the EMC to adopt temporary rules to establish the maximum loads or concentration limits for nitrogen and phosphorous discharges.	**G.S. 143-215.1B(c)**
(a)(10)	**DHHS/Health Services Commission** Allows the Health Services Commission to adopt temporary rules governing the newborn screening program.	**G.S. 130A-125(b1)**
a)(11)	**DHHS/Secretary** Allows the Secretary to adopt rules governing the Work First Program if required by federal law.	**G.S. 108A-27(c)**
(a)(12)	**DENR/Marine Fisheries Commission** Allows the Commission to adopt temporary rules within 6 months of the adoption or amendment of a fishery management plan adopted by the Atlantic States Marine Fisheries Commission.	**G.S. 143B-289.52(e)**
(a)(13)	**DENR/Wildlife Resources Commission** Allows the Commission to adopt temporary rules responding to rabies outbreaks.	**G.S. 131-292.2(a1)**
(a)(14)	**DENR/Coastal Resources Commission** Allows the Commission to adopt temporary rules governing coastal energy facilities. Sunset: July 1, 2005.	**S.L. 98-221, Sec. 2.1**
AMENDS G.S. 150B-21.1 TO ADD NEW SUBSECTION (a6)	**ADDITIONAL BASIS & DIFFERENT PROCEDURE FOR ADOPTION OF TEMPORARY RULES** ***Analysis:*** **Gives the agency an additional basis for adopting a temporary rule *and* mandates public notice, comment, and hearing prior to the adoption of the temporary rule.**	**CURRENTLY FOUND UNDER**
(a6)	**DENR/Environmental Management Commission** Allows the EMC to adopt temporary rules to protect water quality standards in the Cape Fear, Catawba, and Tar-Pamlico River Basins, and also provides mandatory procedures for public notice and hearing prior to the adoption of any temporary rules. Sunset: July 1, 2001.	**S.L. 99-329, Sec. 7.1**

Amends G.S. 150B-21.1 To Add new subsection (a7) with subdivisions (1-5)	Indefinite Period of Time During Which an Agency Can Adopt Temporary Rules to Implement Legislation. *Analysis:* Under the APA and rules adopted by the Office of Administrative Hearings, an agency has up to 180 days after the effective date of an act to adopt temporary rules implementing that act. The following provisions allow the agency an indefinite period of time during which to adopt temporary rule to implement a recent act of the General Assembly.	Currently Found Under
(1)	**Department of Administration** Allows the adoption of temporary rules for driver's education certificates for non-public schools until all rules necessary to implement S.L. 98-212 have been adopted.	**S.L. 98-212, Sec. 9.1(e)**
(2)	**DENR/Marine Fisheries Commission** Allows Commission to adopt temporary rules to implement the Fisheries Reform Act of 1997 until all rules necessary to implement the act have been adopted.	**S.L. 97-400, Sec. 6.10**
(3)	Allows Commission to adopt temporary rules to implement the provisions of S.L. 98-225, Marine Fisheries Amendments, until all rules necessary to implement the act have been adopted.	**S.L. 98-225, Sec. 5.3**
(4)	**Department of Public Instruction/Other Agencies** Allows all departments to which the act applies to adopt temporary rules to implement provisions of S.L. 97-507, Dropout Prevention/Drivers Licenses, until all rules necessary to implement the act have been adopted.	**S.L. 97-507, Sec. 8**
(5)	**Various Agencies** Allows adoption of temporary rules relating to the Hurricane Floyd Recovery Act. The temporary rules must be applicable only to the counties declared federal disaster areas. All temporary rules adopted must be reported to the Joint Legislative Administrative Procedure Oversight Committee.	**S.L. 99-463, ES, Sec. 4**
Amends G.S. 150B-21.1 To Add new subsection (d1) with subdivisions (1-2)	**Temporary Rules May Remain in Effect Longer than 270 Days.** *Analysis:* Normally, temporary rules adopted by agencies expire on the 270th day after publication in the *NC Register*, unless the agency has submitted the permanent version of the rule to the Rules Review Commission. The following temporary rules may remain in place beyond 270 days.	**Currently Found Under**
(1)	**DENR/Environmental Management Commission** Allows rules relating to underground storage tanks adopted pursuant to S.L. 95-377, Underground Storage Tank Amendments, to remain in effect until the Commission adopts permanent rules.	**S.L. 95-377, Sec. 16**
(2)	**Various Agencies** Allows temporary rules related to the Hurricane Floyd Recovery Act to remain in effect until the expiration date set by the agency.	**S.L. 99-463 ES, Sec**

Section 2. Provides that the act is effective when it becomes law.

Attachment III A. III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1595

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1595-ARC-001

Page 1 of __

Date 6-6- ,2000

Comm. Sub. []
Amends Title []

Rep. Blue

moves to amend the bill on page 2, line 15, by deleting the phrase "Until July 1, 2005, the", and substituting "The";

and on page 4, line 2, by deleting the phrase "until July 1, 2001,";

and on page 4, line 25, by rewriting the line to read:
"(1) S.L. 1998-212, Section 9.21(e), relating to Driving Eligibility";

and on page 6, line 9, to delete the phrase "rules, and" and substitute "rules.";

and on page 6, line 21, by rewriting the line to read:
"Section 2. G.S. 150B-21.1(a)(14) as created in Section 1 of this act is repealed effective July 1, 2005.
Section 3. G.S. 150B-21.1(a6) as created in Section 1 of this act is repealed effective July 1, 2001.
Section 4. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1819*
Proposed Committee Substitute H1819-PCS8198-RC001

Short Title: Rural Redevelopment Authority Funds. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO CREATE THE RURAL REDEVELOPMENT AUTHORITY TO FINANCE RURAL ECONOMIC DEVELOPMENT PROJECTS AND INVEST IN RURAL BUSINESS DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2D. North Carolina Rural Redevelopment Authority.

"**§ 143B-437.20. Short title and intent.**

This Part is the 'North Carolina Rural Redevelopment Authority Act'. The purpose of the North Carolina Redevelopment Authority is to finance rural economic development projects and invest in rural business development.

"**§ 143B-437.21. Definitions.**

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Redevelopment Authority.

(2) Board. -- The Board of Directors of the Authority.

(3) Development project. -- Any investment that enables or makes more likely the location or expansion of industrial and commercial businesses in rural counties, which may include sites and industrial parks or centers, together with improvements, such as shell buildings and internal infrastructure.

(4) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.

(5) Intermediate-term loan. -- A loan whose term does not exceed three years.

(6) Regional partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

(7) Revenues. -- The receipts of the Authority during an accounting period, including interest and dividends on investments, realized capital gains, income from lending and consulting activities, rent or lease income, appropriations from the General Assembly, grants from the Golden L.E.A.F. Foundation, and grants and gifts from public and private entities to further the purposes of the Authority.

(8) Rural county. -- A county in North Carolina with a density of fewer than 200 people per square mile based on the most recent United States decennial census.

(9) Small business investment company. -- A small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq.

"**§ 143B-437.22. Creation of Authority and Board.**

(a) Creation. -- The North Carolina Rural Redevelopment Authority is created as a body corporate and politic with the powers and jurisdiction as provided under this

Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. -- The Authority is governed by a Board of Directors, which consists of the following nine members:

(1) Three members appointed by the Governor, two of whom must be representatives of financial institutions and one of whom must be an elected official representing a local government of or in a rural county.

(2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom must be a representative of a regional partnership with a predominantly rural constituency and one of whom must be a representative of a financial institution.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, both of whom must be representatives of financial institutions.

(4) The Secretary of Commerce, who shall serve ex officio.

(5) The chief executive officer of the Authority.

(c) Oath. -- As the holder of an office, each member of the Board must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member.

(d) Selection Criteria. -- In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the State. In addition, members appointed representing financial institutions ideally would be experienced in areas such as commercial lending and commercial real estate lending, public finance, and economic development; work assignments or experiences in rural counties also would be desirable.

(e) Terms. -- The term of office of a member of the Board is three years, except that the Governor shall designate two of the initial members appointed under subdivision (b)(1) of this section to serve a term of one year, and the General Assembly shall designate one of the initial members appointed under subdivision (b)(2) of this section and one of the initial members appointed under subdivision (b)(3) of this section to serve a term of two years. The term of office for the chief executive officer of the Authority shall coincide with the officer's employment by the Board.

(f) Chair and Vice-Chair of the Board. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall

convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-Chair of the Board.

(g) Vacancies. -- All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(h) Removal of Board Members. -- The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(i) Organization of the Board. -- The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(j) Compensation of the Board. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board other than the chief executive officer shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(k) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(l) Chief Executive Officer and Other Employees. -- The Board shall appoint a full-time, professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(m) Office. -- The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part.

"**§ 143B-437.23. Powers of the Authority.**

(a) The Authority has all of the powers necessary to execute the provisions of this Part, including at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To establish, finance, purchase, construct, operate, and regulate development projects and to own, finance, lease, sell, or manage real or personal property.

(3) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business.

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property.

(5) To create and operate agencies and departments needed to implement this Part.

(6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(7) To apply for, accept, and administer grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, and to expend the money in accordance with the requirements imposed by the donor.

(8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Part.

(9) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Part.

(10) To fix, charge, collect, pledge, or assign revenues of the Authority.

(11) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority.

(12) To provide consulting and advisory services to government entities and to private, nonprofit entities.

(13) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(14) To exercise the powers granted counties and cities under G.S. 158-7.1.

(15) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(16) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(17) To create and administer the Rural Investment Fund and the Long-Term Rural Development Fund, as provided in this Part.

(18) To invest in securities of a small business investment company or in a limited partnership interest in a partnership that invests principally in companies in rural counties.

(19) To act as a regranting agency for government grants specifically designated for that purpose.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the chief executive officer, who has the exclusive authority to execute the policy of the Authority. No member of the Board is authorized to give operational directives to any employee of the Authority other than the chief executive officer.

"**§ 143B-437.24. Taxation of property of Authority.**

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution.

"**§ 143B-437.25. Acquisition, disposition, or exchange of real property.**

(a) General. -- The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Exchange. -- The Authority may exchange any property it acquires for other property usable in carrying out the powers conferred on the Authority and also, upon the payment of just compensation, may remove a building or another structure from land needed for its purposes, and reconstruct the structure on another location.

"**§ 143B-437.26. Authority funds.**

Funds of the Authority may be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the Chair, the acting Chair, or the chief executive officer. No warrants may be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Part and unless the account or expenditure has been audited and approved by the Authority or its chief executive officer.

"**§ 143B-437.27. Rural Investment Fund.**

The Authority may create a revolving loan fund to be called the Rural Investment Fund. The Authority shall use monies in the Investment Fund only to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties. The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Investment Fund. The Authority shall give priority to applications from regional partnerships.

"**§ 143B-437.28. Long-Term Rural Development Fund.**

(a) The Authority may create a fund to be known as the Long-Term Rural Development Fund. The Authority may invest and reinvest the assets of the Development Fund.

(b) The income derived from the investment or deposit of the Development Fund shall be used for the following purposes:

(1) To pay the administrative expenses of the Authority.

(2) To make intermediate-term loans and longer-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties.

(3) To acquire property and develop it for industrial sites and industrial parks in rural counties, including any of the following:

a. Providing water, sewer, gas, or electrical distribution lines or equipment for an industrial site or industrial park.

b. Providing road or railroad improvements for an industrial site or industrial park.

c. Providing fiber optic or coaxial cable, towers, and other infrastructure items to accommodate high-speed Internet access.

d. Providing air or water pollution control facilities.

(c) The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Development Fund. The Authority shall give priority to applications from regional partnerships.

"**§ 143B-437.29. Contracting with minority businesses.**

The Authority must comply with the policies regarding contracting with minority businesses as set out in G.S. 143-48, 143-128(f), and 143-135.5 and with any other applicable laws. The Authority is subject to Executive Order Number 150, issued April 20, 1999, regarding contracting with historically underutilized businesses.

"**§ 143B-437.30. Conflicts of interest.**

If any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Board, which must set forth the disclosure in the minutes of the Board. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract.

"**§ 143B-437.31. Cooperation by other State agencies.**

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

"**§ 143B-437.32. Annual and quarterly reports.**

The Authority must, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report must be accompanied by an audit of its books and accounts. The audit must be conducted by the State Auditor. The costs of all audits shall be paid from funds of the Authority.

The Authority must submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Commission.

"**§ 143B-437.33. Dissolution.**

Whenever the Board by resolution determines that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution vests in the State and possession of the funds and other property must be delivered to the State."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 3. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(18) Employees of the Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 4. There is appropriated from the General Fund to the Rural Redevelopment Authority created in this act the sum of two hundred fifty thousand dollars ($250,000) for the 2000-2001 fiscal year to implement the provisions of this act.

Section 5. This act becomes effective July 1, 2000.

HOUSE BILL 1819:
Rural Redevelopment Authority Funds

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Tolson
Date:	June 6, 2000	**Summary by:**	Kory Goldsmith
Version:	H1819-PCS8198		Committee Counsel
	House Proposed Committee Substitute		

SUMMARY: ***HB 1819 creates the North Carolina Rural Redevelopment Authority to provide financing for rural economic development projects and to invest in rural business development. The bill appropriates $250,000 to implement the act. This proposal comes as a recommendation of the Rural Prosperity Task Force.***

PROPOSED COMMITTEE SUBSTITUTE: The proposed committee substitute differs from the original bill as follows:

- Removes all references to bonds and provisions related to borrowing money.
- Adds one member to governing board to give it a total of nine members. The Governor appoints the additional member.
- Removes the authorization to charge fees and rents.
- Replaces specific provisions regarding underutilized businesses with general law cross-references.

BILL ANALYSIS:

Section 1. - The bill adds a new Article 10 to Chapter 143B of the General Statutes.

G.S. 143B-437.20 – States the title of the act and sets-out the purpose of the Rural Redevelopment Authority.

G.S. 143B-437.21 – Provides definitions applicable to the act. A "**development project**" is an investment that enables or increases the possibility that an industrial expansion or location will occur in a rural county, including improvements such as shell buildings and internal infrastructure. An "**intermediate-term loan**" is a loan whose term does not exceed 3 years. A "**rural county**" is a county in North Carolina with a density of fewer than 200 people per square mile based on the most recent U.S. decennial census.

G.S. 143B-437.22 – Creates the Authority and the Board. The Authority is a body corporate and politic, and a State agency created to perform essential governmental and public functions. It is located in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce. The Board of Directors is composed of 9 members.

- 3 appointed by the Governor – two must be representatives of financial institutions, one must be an elected official representing a local government in a rural county.
- 2 appointed by the House upon the recommendation of the Speaker – one must be a representative of a predominantly rural regional partnership and one must be representative of a financial institution.
- 2 appointed by the Senate upon the recommendation of the President Pro Tempore – both must be representatives of financial institutions.

- The Secretary of Commerce.
- The chief executive officer of the Authority.

Members serve 3-year terms except the chief executive officer's term coincides with his or her appointment by the Board. The authority that made the appointment fills vacancies. The Governor appoints one of the members as the Chair, and the Board elects a Vice-Chair.

G.S. 143B-437.23 – The Authority has the power to sue and be sued; establish development projects; own, manage, and lease real or personal property; contract with State and local governments; create and operate agencies and departments; pay necessary costs and expenses; apply for and administer grants; adopt and/or repeal bylaws; execute financing agreements; to employ professional consultants; to provide consulting and advisory services; to purchase insurance; to exercise the powers of local development provided to counties and cities under G.S. 158-7.1; to create and invest the monies of the Rural Investment Fund and the Long-Term Rural Development Fund; to invest in securities of a small business investment company; to act as a regranting agency.

G.S. 143B-437.24 – Property owned by the Authority is exempt from taxation.

G.S. 143B-437.25 – The Authority may acquire and exchange property.

G.S. 143B-437.26 – Funds of the Authority may only be paid upon warrants signed by the treasurer and counter signed by the Chair or the chief executive officer.

G.S. 143B-437.27 – Creates the Rural Investment Fund to be used to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects. The Authority establishes the terms of the loans and shall give priority to applications from regional partnerships.

G.S. 143B-437.28 – Creates the Long-Term Rural Development Fund. The Authority shall invest the assets of the Development Fund and use the income from those investments to pay its administrative expenses, to make intermediate and long-term loans, and to acquire property and develop it for industrial sites. The Authority establishes the terms of the loans and shall give priority to applications from regional partnerships.

G.S. 143B-437.29 – The Authority shall comply with existing laws and Executive Orders regarding minority businesses and historically under utilized businesses.

G.S. 143B-437.30 – Any member of the Board or officer or employee of the Authority who has a direct or indirect interest in firm or contract with the Authority shall disclose the interest and not participate on behalf of the Authority in the authorization of that contract.

G.S. 143B-437.31 – Other State agencies shall cooperate with the Authority.

G.S. 143B-437.32 – The Authority shall issue annual and quarterly reports to the General Assembly.

G.S. 143B-437.33 – Sets-out the provisions for dissolution of the Authority

Section 2. – Amends G.S. 120-123 to prohibit the appointment of members of the Legislature to the Board.

Section 3. – Amends G.S. 126-5(c1) to make the employees of the Authority exempt from the State Personnel Act.

The Act becomes effective July 1, 2000.

H1819-SMRC-001(House PCS)

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 6, 2000**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Evans	NC Board of Examiners
JERRY CARTER	" " " "
Al Coleman	Consulting Engineers' Council/NC
RICK CARUSO	NC Dept of Commerce
Sara Seigler	Governor's Office
Rosi Dorsett	Dept. of Commerce
Leslie Bonney	NC Dept of Commerce
JIM FAIN	Dept of Commerce
Nelle Hotchkiss	NC Electric Co-ops
Phil Conrad	Lt. Governor's Office
Stuart Albright	Lt. Gov.'s office
BRUCE THOMPSON	CEC/NC
Mark Walters	Office of the Governor
ROGER SHEATS	NC RURAL CENTER
Alan Miles	Bailey & Dixon LLP
Anne Wimsatt	NCCADV
Sona Shandilya	NCCADV
Pam Wescott	Sprint
R. Paul Wilms	NCMBA
JAy Rouse	NC Electric Co-ops
William H. Potter, Jr	NCPTA & NCDS

House Committee
on
Ways and Means

Minutes
June 7, 2000
Room 1228

The House Committee on Ways and Means met at 10:00 on Wednesday, June 7, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Bowie, Buchanan, Cox, Decker, Eddins, Fox, Gibson, Haire, McCombs, Michaux, Morris, Owens, Pope, Starnes, Thomas, Warren, and Weiss. Reps. Ramsey and Redwine had excused absences. Rep. Nesbitt, Chairman, presided.

Committee Substitute **for HB 1819 (Rural Redevelopment Authority Funds)** *(See Attachment I)* sponsored by Rep. Joe Tolson was before the Committee. Rep. Buchanan moved that the committee substitute be adopted for consideration and his motion passed.

Rep. Tolson explained the changes from the bill adopted at the Committee's previous meeting.

Kory Goldsmith explained further, on Page 8, line 12, the bill has the authority to create two different funds. One is for intermediate-terms loans (Rural Investment Fund) and the other is for long-terms (Long-Term Rural Development Fund).

Also, Page 10, line 22 is a new Section. This gives the Board the authority and more time to adopt temporary rules.

Rep. Nesbitt asked if the bill were still subject to the Administrative Procedures Act and Ms. Goldsmith said it was. He also suggested to put a sunset provision in the bill.

Ms. Goldsmith also addressed a concern about language on Page 9, Cooperation by other State agencies. She said there were three places in the Statutes where similar language appears, one for the Global Transpark Authority, one for the Agriculture Finance Authority except the word "may" is used, rather than "shall," and then again in the North Carolina Bridge Authority.

Rep. Michaux had concerns about the language on Page 9, Line 24. Department of Commerce Secretary Rick Carlyle was recognized and he said this was just language pulled in from other Statutes with no particular intent. He said would have no objections to changing the language.

Rep. Blue said we shouldn't change the language so much that agencies wouldn't cooperate.

Rep. Pope favored changing the language to "may."

Rep. Michaux moved to amend the bill on Page 9,line 24 by rewriting the line to read:

> "All State officers and agencies shall cooperate and may render services where appropriate to".

Rep. Haire moved that the amendment be adopted and the motion passed. *(See Attachment II)*

Rep. Decker had questions about "Regional Partnerships." Secretary Carlyle explained that in 1993 the General Assembly created seven Regional Partnerships around the State.

Rep. Nesbitt suggested that the bill needed to be amended to say that funds would be distributed equitably to all rural counties that are eligible to receive these funds.

Considerable discussion followed and the bill was carried over to the next meeting of the Committee.

The meeting adjourned at 11:00 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

DRAFT

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1819*
Proposed House Committee Substitute
H1819-CSRC-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Rural Redevelopment Authority Funds. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO CREATE THE RURAL REDEVELOPMENT AUTHORITY TO FINANCE RURAL ECONOMIC DEVELOPMENT PROJECTS AND INVEST IN RURAL BUSINESS DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2D. North Carolina Rural Redevelopment Authority.

"§ 143B-437.20. Short title and intent.

This Part is the 'North Carolina Rural Redevelopment Authority Act'. The purpose of the North Carolina Redevelopment Authority is to finance rural economic development projects and invest in rural business development.

"§ 143B-437.21. Definitions.

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Redevelopment Authority.

(2) Board. -- The Board of Directors of the Authority.

(3) Development project. -- Any investment that enables or makes more likely the location or expansion of industrial and commercial businesses in rural

counties, which may include sites and industrial parks or centers, together with improvements, such as shell buildings and internal infrastructure.

(4) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.

(5) Intermediate-term loan. -- A loan whose term does not exceed three years.

(6) Regional partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

(7) Revenues. -- The receipts of the Authority during an accounting period, including interest and dividends on investments, realized capital gains, income from lending and consulting activities, rent or lease income, appropriations from the General

Assembly, grants from the Golden L.E.A.F. (Long-term Economic Advancement Foundation), Inc., and grants and gifts from public and private entities to further the purposes of the Authority.

(8) Rural county. -- A county in North Carolina with a density of fewer than 200 people per square mile based on the most recent United States decennial census.

(9) Small business investment company. -- A small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq.

"§ 143B-437.22. Creation of Authority and Board.

(a) Creation. -- The North Carolina Rural Redevelopment Authority is created as a body corporate and politic with the powers and jurisdiction as provided under this Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. -- The Authority is governed by a Board of Directors, which consists of the following nine members:

(1) Three members appointed by the Governor, two of whom must be representatives of financial institutions and one of whom must be an elected official representing a local government of or in a rural county.

(2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom must be a representative of a regional partnership with a predominantly rural constituency and one of whom must be a representative of a financial institution.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, both of whom must be representatives of financial institutions.

(4) The Secretary of Commerce, who shall serve ex officio.

(5) The chief executive officer of the Authority.

(c) Oath. -- As the holder of an office, each member of the Board must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member.

(d) Selection Criteria. -- In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the State. In addition, members appointed representing financial institutions ideally would be experienced in areas such as commercial lending and commercial real estate lending, public finance, and economic development; work assignments or experiences in rural counties also would be desirable.

(e) Terms. -- The term of office of a member of the Board is three years, except that the Governor shall designate two of the initial members appointed under subdivision (b)(1) of this section to serve a term of one year, and the General Assembly shall designate one of the initial members appointed under subdivision (b)(2) of this section and one of the initial members appointed under subdivision (b)(3) of this section to serve a term of two years. The term of office for the chief executive officer of the Authority shall coincide with the officer's employment by the Board.

(f) Chair and Vice-Chair of the Board. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-Chair of the Board.

(g) Vacancies. -- All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(h) Removal of Board Members. -- The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(i) Organization of the Board. -- The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(j) Compensation of the Board. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board other than the chief executive officer shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(k) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(l) Chief Executive Officer and Other Employees. -- The Board shall appoint a full-time, professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(m) Office. -- The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part.

"§ 143B-437.23. Powers of the Authority.

(a) The Authority has all of the powers necessary to execute the provisions of this Part, including at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To establish, finance, purchase, construct, operate, and regulate development projects and to own, finance, lease, sell, or manage real or personal property.

(3) To contract and enter into agreements with the State, local governments, other authorities of

North Carolina, and other states for the interchange of business.

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property.

(5) To create and operate agencies and departments needed to implement this Part.

(6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(7) To apply for, accept, and administer grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, and to expend the money in accordance with the requirements imposed by the donor.

(8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Part.

(9) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Part.

(10) To fix, charge, collect, pledge, or assign revenues of the Authority.

(11) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority.

(12) To provide consulting and advisory services to government entities and to private, nonprofit entities.

(13) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(14) To exercise the powers granted counties and cities under G.S. 158-7.1(a).

(15) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(16) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(17) To create and administer the Rural Investment Fund and the Long-Term Rural Development Fund, as provided in this Part.

(18) To invest in securities of a small business investment company or in a limited partnership interest in a partnership that invests principally in companies in rural counties.

(19) To act as a regranting agency for government grants specifically designated for that purpose.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the chief executive officer, who has the exclusive authority to execute the policy of the Authority. No member of the Board is authorized to give operational directives to any employee of the Authority other than the chief executive officer.

(c) The Authority does not have the power of eminent domain or the power to levy any tax.

"§ 143B-437.24. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution.

"§ 143B-437.25. Acquisition, disposition, or exchange of real property.

(a) General. -- The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Exchange. -- The Authority may exchange any property it acquires for other property usable in carrying out the powers conferred on the Authority and also, upon the payment of just compensation, may remove a building or another structure from land needed for its purposes, and reconstruct the structure on another location.

"§ 143B-437.26. Authority funds.

Funds of the Authority may be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the Chair, the acting Chair, or the chief

executive officer. No warrants may be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Part and unless the account or expenditure has been audited and approved by the Authority or its chief executive officer.

"§ 143B-437.27. Rural Investment Fund.

The Authority may create a revolving loan fund to be called the Rural Investment Fund. The Authority shall use monies in the Investment Fund only to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties. The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Investment Fund. The Authority shall give priority to applications from regional partnerships.

"§ 143B-437.28. Long-Term Rural Development Fund.

(a) The Authority may create a fund to be known as the Long-Term Rural Development Fund. The Authority may invest and reinvest the assets of the Development Fund.

(b) The income derived from the investment or deposit of the Development Fund shall be used for the following purposes:

(1) To pay the administrative expenses of the Authority.

(2) To make intermediate-term loans and longer-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties.

(3) To acquire property and develop it for industrial sites and industrial parks in rural counties, including any of the following:

a. Providing water, sewer, gas, or electrical distribution lines or equipment for an industrial site or industrial park.

b. Providing road or railroad improvements for an industrial site or industrial park.

c. Providing fiber optic or coaxial cable, towers, and other infrastructure items to accommodate high-speed Internet access.

d. Providing air or water pollution control facilities.

(c) The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility

standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Development Fund. The Authority shall give priority to applications from regional partnerships.

"§ 143B-437.29. Contracting with minority businesses.

The Authority must comply with the policies regarding contracting with minority businesses as set out in G.S. 143-48, 143-128(f), and 143-135.5 and with any other applicable laws. The Authority is subject to Executive Order Number 150, issued April 20, 1999, regarding contracting with historically underutilized businesses.

"§ 143B-437.30. Conflicts of interest.

If any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Board, which must set forth the disclosure in the minutes of the Board. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract.

"§ 143B-437.31. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

"§ 143B-437.32. Annual and quarterly reports.

The Authority must, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report must be accompanied by an audit of its books and accounts. The audit must be conducted by the State Auditor. The costs of all audits shall be paid from funds of the Authority.

Each annual report must be accompanied by data indicating the geographical distribution of development projects funded directly or indirectly by the Authority. Every three years, the Authority shall provide to the Governor and to the General Assembly an analysis of the data for the previous three-year period showing the extent to which the funding of development projects has been distributed equitably among the geographical regions of the State.

The Authority must submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and

contain any information about the Authority's activities that is requested by the Commission.

"§ 143B-437.33. Dissolution.

Whenever the Board by resolution determines that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution vests in the State and possession of the funds and other property must be delivered to the State."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 3. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(18) Employees of the Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 4. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) Reserved.

(2) The North Carolina Rural Redevelopment Authority Act, Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 5. There is appropriated from the General Fund to the Rural Redevelopment Authority created in this act the sum of two hundred fifty thousand dollars ($250,000) for the 2000-2001 fiscal year to implement the provisions of this act.

Section 6. This act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment II**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1719 DATE 6-7-2000

S. B. No. _____ Amendment No. [redacted]

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux

Sen.)

moves to amend the bill on page 9, line 24

( ) WHICH CHANGES THE TITLE

by ~~striking the word "shall" and~~ inserting after the word "cooperate" ~~to cite~~

by rewriting the line to read:

"All State officers and agencies shall cooperate and may render services where appropriate to.")

and on page 16, lines 3-4 to delete the line. [illegible]

SIGNED _____

ADOPTED [redacted] X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

House Committee
on
Ways and Means

Minutes
June 14, 2000
Room 1228

The House Committee on Ways and Means met at 10:00 on Wednesday, June 14, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Bowie, Buchanan, Cox, Fox, Gibson, Haire, Michaux, Morris, Oldham, Owens, Redwine, Thomas, Warren, Weiss and Wilson. Reps. Ramsey had an excused absence. Rep. Nesbitt, Chairman, presided.

Committee Substitute for **HB 1819 (Rural Redevelopment Authority Funds),** sponsored by Rep. Tolson was before the Committee. *(See Attachment I)*

Rep. Blue presented two amendments to the Committee. (*See Attachments II, III)* Each amendment was adopted. Rep. Haire moved to amend the bill *(See Attachment IV)* and the motion passed.

Rep. Nesbitt asked Rep. Blue to preside while he presented an amendment to the committee. (*See Attachment V)* The amendment was subsequently withdrawn.

Rep. Nesbitt moved to amend the bill again (*See Attachment VI, Amendment 4)* His motion passed.

Rep. Owens moved to take the bill as amended and create a new committee substitute, give that bill a favorable report and the original bill an unfavorable report. The motion passed.

SB 1316 (Professional Engineers/Land Surveyors Licensure) Sponsored by Senator Miller was before the Committee. Staff distributed a proposed Committee substitute and Rep. Haire moved that it be adopted for consideration. The motion passed. (*See Attachment VII)*

Senator Miller said that bill was a recommendation of the Administrative Oversight Committee. It requires an applicant who has failed an exam three times to present evidence that the applicant has taken actions to enhance his/her chances of passing the exam prior to reexamination; changes the license expiration date for businesses from December 31st to June 30th; and authorizes the Board of Examiners for Engineers and Land Surveyors to establish a limit on the number of places of business that a licensee may supervise. (*See Attachment VIII).*

Rep. Michaux had a problem with establishing the number of offices an engineer can have.

Jerry Carter, Executive Director with the Board of Professional Engineers, was recognized. He said this bill gives them the statutory authority to establish the number of offices an engineer can open.

Rep. Owens said in rural areas, this gives some flexibility and he liked the current language in the bill for that reason.

Considerable discussion followed. Bruce Thompson, Counsel to Consulting Engineers, was recognized and said that the Board needed the authority to limit the number of offices for protection of the public good.

Rep. Michaux moved to amend the bill.

Rep. Haire moved to give the committee substitute a favorable report.

Rep. Gibson moved to amend the bill (*See Attachment IX).* He said this amendment would add soil scientists licensed under Chapter 89F of the General Statutes to Form professional corporations under Chapter 55B of the General Statutes and Limited Liability Companies under Chapter 57C of the General Statutes. This amendment changed the title of the bill. His amendment was adopted.

The meeting adjourned at 10:55 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

DRAFT

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1819*
Proposed House Committee Substitute
H1819-CSRC-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Rural Redevelopment Authority Funds. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO CREATE THE RURAL REDEVELOPMENT AUTHORITY TO FINANCE RURAL ECONOMIC DEVELOPMENT PROJECTS AND INVEST IN RURAL BUSINESS DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2D. North Carolina Rural Redevelopment Authority.

"§ 143B-437.20. Short title and intent.

This Part is the 'North Carolina Rural Redevelopment Authority Act'. The purpose of the North Carolina Redevelopment Authority is to finance rural economic development projects and invest in rural business development.

"§ 143B-437.21. Definitions.

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Redevelopment Authority.

(2) Board. -- The Board of Directors of the Authority.

(3) Development project. -- Any investment that enables or makes more likely the location or expansion of industrial and commercial businesses in rural

counties, which may include sites and industrial parks or centers, together with improvements, such as shell buildings and internal infrastructure.

(4) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.

(5) Intermediate-term loan. -- A loan whose term does not exceed three years.

(6) Regional partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

(7) Revenues. -- The receipts of the Authority during an accounting period, including interest and dividends on investments, realized capital gains, income from lending and consulting activities, rent or lease income, appropriations from the General

Assembly, grants from the Golden L.E.A.F. (Long-term Economic Advancement Foundation), Inc., and grants and gifts from public and private entities to further the purposes of the Authority.

(8) Rural county. -- A county in North Carolina with a density of fewer than 200 people per square mile based on the most recent United States decennial census.

(9) Small business investment company. -- A small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq.

"§ 143B-437.22. Creation of Authority and Board.

(a) Creation. -- The North Carolina Rural Redevelopment Authority is created as a body corporate and politic with the powers and jurisdiction as provided under this Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. -- The Authority is governed by a Board of Directors, which consists of the following nine members:

(1) Three members appointed by the Governor, two of whom must be representatives of financial institutions and one of whom must be an elected official representing a local government of or in a rural county.

(2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom must be a representative of a regional partnership with a predominantly rural constituency and one of whom must be a representative of a financial institution.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, both of whom must be representatives of financial institutions.

(4) The Secretary of Commerce, who shall serve ex officio.

(5) The chief executive officer of the Authority.

(c) Oath. -- As the holder of an office, each member of the Board must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member.

(d) Selection Criteria. -- In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the State. In addition, members appointed representing financial institutions ideally would be experienced in areas such as commercial lending and commercial real estate lending, public finance, and economic development; work assignments or experiences in rural counties also would be desirable.

(e) Terms. -- The term of office of a member of the Board is three years, except that the Governor shall designate two of the initial members appointed under subdivision (b)(1) of this section to serve a term of one year, and the General Assembly shall designate one of the initial members appointed under subdivision (b)(2) of this section and one of the initial members appointed under subdivision (b)(3) of this section to serve a term of two years. The term of office for the chief executive officer of the Authority shall coincide with the officer's employment by the Board.

(f) Chair and Vice-Chair of the Board. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-Chair of the Board.

(g) Vacancies. -- All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(h) Removal of Board Members. -- The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(i) Organization of the Board. -- The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(j) Compensation of the Board. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board other than the chief executive officer shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(k) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(l) Chief Executive Officer and Other Employees. -- The Board shall appoint a full-time, professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(m) Office. -- The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part.

"**§ 143B-437.23. Powers of the Authority.**

(a) The Authority has all of the powers necessary to execute the provisions of this Part, including at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To establish, finance, purchase, construct, operate, and regulate development projects and to own, finance, lease, sell, or manage real or personal property.

(3) To contract and enter into agreements with the State, local governments, other authorities of

North Carolina, and other states for the interchange of business.

(4) To rent, lease, purchase, acquire, own, encumber, dispose of, or mortgage real or personal property.

(5) To create and operate agencies and departments needed to implement this Part.

(6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(7) To apply for, accept, and administer grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, and to expend the money in accordance with the requirements imposed by the donor.

(8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Part.

(9) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Part.

(10) To fix, charge, collect, pledge, or assign revenues of the Authority.

(11) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority.

(12) To provide consulting and advisory services to government entities and to private, nonprofit entities.

(13) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(14) To exercise the powers granted counties and cities under G.S. 158-7.1(a).

(15) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(16) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(17) To create and administer the Rural Investment Fund and the Long-Term Rural Development Fund, as provided in this Part.

(18) To invest in securities of a small business investment company or in a limited partnership interest in a partnership that invests principally in companies in rural counties.

(19) To act as a regranting agency for government grants specifically designated for that purpose.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the chief executive officer, who has the exclusive authority to execute the policy of the Authority. No member of the Board is authorized to give operational directives to any employee of the Authority other than the chief executive officer.

(c) The Authority does not have the power of eminent domain or the power to levy any tax.

"§ 143B-437.24. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution.

"§ 143B-437.25. Acquisition, disposition, or exchange of real property.

(a) General. -- The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

(b) Exchange. -- The Authority may exchange any property it acquires for other property usable in carrying out the powers conferred on the Authority and also, upon the payment of just compensation, may remove a building or another structure from land needed for its purposes, and reconstruct the structure on another location.

"§ 143B-437.26. Authority funds.

Funds of the Authority may be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the Chair, the acting Chair, or the chief

executive officer. No warrants may be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Part and unless the account or expenditure has been audited and approved by the Authority or its chief executive officer.

"§ 143B-437.27. Rural Investment Fund.

The Authority may create a revolving loan fund to be called the Rural Investment Fund. The Authority shall use monies in the Investment Fund only to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties. The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Investment Fund. The Authority shall give priority to applications from regional partnerships.

"§ 143B-437.28. Long-Term Rural Development Fund.

(a) The Authority may create a fund to be known as the Long-Term Rural Development Fund. The Authority may invest and reinvest the assets of the Development Fund.

(b) The income derived from the investment or deposit of the Development Fund shall be used for the following purposes:

(1) To pay the administrative expenses of the Authority.

(2) To make intermediate-term loans and longer-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties.

(3) To acquire property and develop it for industrial sites and industrial parks in rural counties, including any of the following:

a. Providing water, sewer, gas, or electrical distribution lines or equipment for an industrial site or industrial park.

b. Providing road or railroad improvements for an industrial site or industrial park.

c. Providing fiber optic or coaxial cable, towers, and other infrastructure items to accommodate high-speed Internet access.

d. Providing air or water pollution control facilities.

(c) The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility

standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Development Fund. The Authority shall give priority to applications from regional partnerships.

"§ 143B-437.29. Contracting with minority businesses.

The Authority must comply with the policies regarding contracting with minority businesses as set out in G.S. 143-48, 143-128(f), and 143-135.5 and with any other applicable laws. The Authority is subject to Executive Order Number 150, issued April 20, 1999, regarding contracting with historically underutilized businesses.

"§ 143B-437.30. Conflicts of interest.

If any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Board, which must set forth the disclosure in the minutes of the Board. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract.

"§ 143B-437.31. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

"§ 143B-437.32. Annual and quarterly reports.

The Authority must, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report must be accompanied by an audit of its books and accounts. The audit must be conducted by the State Auditor. The costs of all audits shall be paid from funds of the Authority.

Each annual report must be accompanied by data indicating the geographical distribution of development projects funded directly or indirectly by the Authority. Every three years, the Authority shall provide to the Governor and to the General Assembly an analysis of the data for the previous three-year period showing the extent to which the funding of development projects has been distributed equitably among the geographical regions of the State.

The Authority must submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and

contain any information about the Authority's activities that is requested by the Commission.

"§ 143B-437.33. Dissolution.

Whenever the Board by resolution determines that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution vests in the State and possession of the funds and other property must be delivered to the State."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 3. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(18) Employees of the Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 4. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) Reserved.

(2) The North Carolina Rural Redevelopment Authority Act, Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 5. There is appropriated from the General Fund to the Rural Redevelopment Authority created in this act the sum of two hundred fifty thousand dollars ($250,000) for the 2000-2001 fiscal year to implement the provisions of this act.

Section 6. This act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1819

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1819-ARC-002

Page 1 of __

Date _____,2000

Comm. Sub. [YES]
Amends Title []
H1819-CSRC-002

Rep. Blue

moves to amend the bill on page 9, lines 40-41, by rewriting the lines to read:
"distributed among the rural counties of every geographical region in an equitable manner.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Attachment III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1819

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1819-ARC-003

Page 1 of __

Date _____,2000

Comm. Sub. [YES]
Amends Title []
H1819-CSRC-003

Rep. Blue

moves to amend the bill on page 10, between lines 32 and 33, by inserting between the lines:

"Section 5. G.S. 150B-21.1(a7)(2), as enacted by Section 4 of this act, is repealed effective July 1, 2002.";

and by renumbering the remaining sections.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1819

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

H1819-ARC-005

Date _____,2000

Comm. Sub. [YES]
Amends Title []
H1819-CSRC-005

Rep. Haire

moves to amend the bill on page 10, between lines 32 and 33, by inserting between the lines:

"Section 5. G.S. 66-58(b) is amended by adding a new subdivision to read:

'(21) The Rural Redevelopment Authority or a lessee of the Authority.'".

and by renumbering the remaining sections.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Withdrawn
Attachment V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1819

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

H1819-ARC-001 Page 1 of __

Date_____,2000

Comm. Sub. [YES]
Amends Title []
H1819-CSRC-002

Rep. Nesbitt

moves to amend the bill on page 3, line 27, by deleting the word "nine" and substituting "seven";

and on page 3, lines 28-32, by rewriting the lines to read:
"(1) Two members appointed by the Governor, both of whom must be representatives of financial institutions.";

and on page 4, line 3, by deleting the line;

and on page 4, line 17, by deleting the word "two" and substituting the word "one";

and on page 4, line 19, by deleting the phrase "one year," and substituting "two years,";

and on page 4, lines 23-25, by deleting the sentence that begins on line 23;
and on page 5, lines 12-13, by deleting the phrase "other than the chief executive officer".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

Attachment VI
VI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H1819

H. B. No. _____ DATE 6-14-2000

S. B. No. _____ Amendment No. 4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 002

(Rep.) Nesbitt
(Sen.)

moves to amend the bill on page 5, lines 39-42

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(2) To finance ~~or refi~~ the purchase of real or personal property.";

and on page 6, lines 3-4, to delete the lines.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

Attachment VII 6/14/2000 Adopted Attachment VII

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1316*
Judiciary II Committee Substitute Adopted 5/30/00
Third Edition Engrossed 5/31/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1316-CSSB-001
21:44:18 EZT / 6-JUN-00

ATTENTION: Line numbers may change after adoption.

Short Title: Professional Engineers/Land Surveyors Licensure.

(Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF CANDIDATES FOR ENGINEERING AND SURVEYING LICENSURE; TO CHANGE THE ANNUAL ENGINEERING AND SURVEYING LICENSE EXPIRATION DATE FOR BUSINESSES; AND TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ESTABLISH A LIMIT ON THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(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 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,~~ fee and documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam. A candidate with a combination of three failures or unexcused absences may only be considered by the Board for reexamination at the end of 12 ~~months.~~ months following the third failure or unexcused absence. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-7 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for 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 any evidence 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 seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of 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,~~ immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month ~~of January,~~ immediately following the month of expiration, 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 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the

individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for 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 licensees who have not effected their renewal by the first day of ~~February~~ the month immediately following the ~~date of their expiration.~~ renewal period. The Board may 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 the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each 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 3. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. 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 licensed by the Board and has paid 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 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. The Board may establish a limit on the number of separate offices or places of business for which an individual registrant may be responsible under this section.

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 4. This act is effective when it becomes law.

Attachment VIII

SENATE BILL 1316:
Professional Engineers/Land Surveyors Licensure

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Miller
Date:	June 7, 2000	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Third Edition		

SUMMARY: ***Senate Bill 1316 requires an applicant who has failed an exam three times to present evidence that the applicant has taken actions to enhance his/her chances of passing the exam prior to reexamination; changes the license expiration date for businesses from December 31st to June 30th; and authorizes the Board of Examiners for Engineers and Land Surveyors to establish a limit on the number of places of business that a licensee may supervise.***

BACKGROUND: On April 13, 2000, the Rules Review Commission (RRC) objected to three rules adopted by the Board of Examiners for Engineers and Land Surveyors. Under G.S. 150B-21.8, the RRC reviews and may object to language in an agency's rule that is not being amended. The objections by the RRC to the Board's rules were to existing language in the rules. The Board has requested legislation to codify the substance of two of the disapproved rules and to give the Board specific statutory authority to properly adopt rules dealing with the subject matter of the third disapproved rule.

BILL ANALYSIS:

Section 1. Under current law, candidates for licensure who fail the licensing exam three times are eligible for re-examination after submitting a new application with the appropriate fee and may be considered for re-examination by the Board after 12 months. Section 1 of the bill would add a requirement that applicants for re-examination provide documented evidence of actions taken to enhance the applicant's likelihood of passing the exam.

Section 2. Under current law, all certificates of licensure expire December 31st of each year. Section 2 of the bill would change the license expiration date for business firms and corporations from December 31st to June 30th of each year. Other licenses would continue to expire on December 31st.

Section 3. Under current law, work done by business firms and corporations must be done under the responsible charge of individual registrants. There is no specific statutory authority, however, for the Board to adopt rules to limit the number of offices for which an individual registrant may be responsible. Section 3 of the bill would allow the Board to establish a limit on the number of offices that a licensee may supervise at any one time.

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

PROPOSED COMMITTEE SUBSTITUTE (S1316-CSSB-001): The Proposed Committee Substitute for Senate Bill 1316 (Third Edition) makes clarifying and conforming changes.

Note: Mary Shuping, Committee Staff to the Joint Legislative Administrative Procedure Oversight Committee, contributed to the preparation of this summary.

Attachment IX

6/14/2000
Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1316

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1316-ASB-001.02

Date 6-14- , 2000

Comm. Sub. [YES]
Amends Title [YES]
PCS S1316-CSSB-001 for the Third Edition

Representative Gibson

moves to amend the bill on page 1, lines 2 through 9,
by rewriting those lines to read:
"AN ACT TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF CANDIDATES FOR ENGINEERING AND SURVEYING LICENSURE; TO CHANGE THE ANNUAL ENGINEERING AND SURVEYING LICENSE EXPIRATION DATE FOR BUSINESSES; TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ESTABLISH A LIMIT ON THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE; AND TO AUTHORIZE SOIL SCIENTISTS LICENSED UNDER CHAPTER 89F OF THE GENERAL STATUTES TO FORM PROFESSIONAL CORPORATIONS UNDER CHAPTER 55B OF THE GENERAL STATUTES AND LIMITED LIABILITY COMPANIES UNDER CHAPTER 57C OF THE GENERAL STATUTES." and

on page 4, line 3,
by rewriting that line to read:
"Section 4. G.S. 55B-2(6) reads as rewritten:
'(6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9A, "Nursing Practice Act," with regard to registered nurses,

Article 11, "Veterinarians," Article 12A, "Podiatrists," Article 18A, "Practicing Psychologists," Article 18D, "Occupational Therapy," and Article 24, "Licensed Professional Counselors," of Chapter 90; Chapter 89C, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; Chapter 90B, "Social Worker Certification Act" with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, "Geologists"; ~~and Chapter 89B, "Foresters."~~ Chapter 89B, "Foresters"; and Chapter 89F, "North Carolina Soil Scientist Licensing Act".'

Section 5. G.S. 55B-6(a) reads as rewritten:

'(a) Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, ~~and 89E,~~ 89E, and 89F, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in this State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1316

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

S1316-ASB-001.02

nonprofessional transferee. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock.'

Section 6. G.S. 55B-14(b) reads as rewritten:

'(b) Notwithstanding subsection (a) of this section, in the case of architectural, landscape architectural, engineering or land ~~surveying and geological services,~~ surveying, geological, and soil science services, as defined in Chapters 83A, 89A, 89C, ~~and 89E~~ 89E, and 89F respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession.'

Section 7. G.S. 89F-6 reads as rewritten:

'**§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.**

A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter 57C of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship.'

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1316*
Judiciary II Committee Substitute Adopted 5/30/00
Third Edition Engrossed 5/31/00
Proposed House Committee Substitute S1316-PCS2850-SB002

Short Title: Professional Engineers/Land Surveyors Licensure. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF CANDIDATES FOR ENGINEERING AND SURVEYING LICENSURE; TO CHANGE THE ANNUAL ENGINEERING AND SURVEYING LICENSE EXPIRATION DATE FOR BUSINESSES; TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ADOPT RULES REGULATING THE OPERATION OF ENGINEERING AND LAND SURVEYING OFFICES; AND TO AUTHORIZE SOIL SCIENTISTS LICENSED UNDER CHAPTER 89F OF THE GENERAL STATUTES TO FORM PROFESSIONAL CORPORATIONS UNDER CHAPTER 55B OF THE GENERAL STATUTES AND LIMITED LIABILITY COMPANIES UNDER CHAPTER 57C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(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 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,~~ fee and documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam. A candidate with a

combination of three failures or unexcused absences may only be considered by the Board for reexamination at the end of 12 ~~months.~~ months following the third failure or unexcused absence. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-17 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for 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 any evidence 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 seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of 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,~~ immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month ~~of January,~~ immediately following the month of expiration, 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 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for 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 licensees who have not effected their renewal by the first day of ~~February~~ the month immediately following the ~~date of their expiration.~~ renewal period. The Board may 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 the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each 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 3. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. 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 licensed by the Board and has paid 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 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. The Board may adopt rules regulating the operation of offices and places of business of corporations and business firms licensed under this section to ensure that professional engineering and land surveying services are performed under the supervision of licensed professional engineers and land surveyors.

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 4. G.S. 55B-2(6) reads as rewritten:

"(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, 'Nursing Practice Act,' with regard to registered nurses, Article 11, 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' Article 18D, 'Occupational Therapy,' and Article 24, 'Licensed Professional Counselors,' of Chapter 90; Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 90B, 'Social Worker Certification Act' with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, 'Geologists'; ~~and Chapter 89B, 'Foresters.'~~ Chapter 89B, 'Foresters'; and Chapter 89F, 'North Carolina Soil Scientist Licensing Act'."

Section 5. G.S. 55B-6(a) reads as rewritten:

"(a) Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, ~~and 89E,~~ 89E, and 89F, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such nonprofessional transferee. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock."

Section 6. G.S. 55B-14(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, in the case of architectural, landscape architectural, engineering or land ~~surveying and geological services,~~ surveying, geological, and soil science services, as defined in Chapters 83A, 89A, 89C, ~~and 89E~~ 89E, and 89F respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession."

Section 7. G.S. 89F-6 reads as rewritten:

"§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.

A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter 57C of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship."

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

VISITOR REGISTRATION SHEET

House Ways and Means Committee — Name of Committee

June 14, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lyman Cooper	CSX. Corp.
Lucius Pullen	Attorney NCMA
R. Paul Williams	NCMSA
William Potter	NCPTA - NCDS
Leslie Boney	NCDOC
Sara Singleton	Governor's Office
Bruce Thompson	Consulting Engineers
Emily Meeker	CCNC
Dot Mead	CCNC
Glenn McKillian	Moore / Van Allen
[illegible]	Bode & Assoc.
Steve Woodson	NC Farm Bureau
Tom McCanless	DENR
L'Tryce Slade	DENR
Carl Goodwin	OSP
Ray Pope	DSB
Jerry Carter	NC Bd. of Examiners
Jim Blackburn	Assoc. County Commrs
Ron Aycock	" " "
Hubert Byrd	licensed soil scientist - S&EC
Mike Carter	NCCBA

House Committee
on
Ways and Means

Minutes
June 20, 2000
Room 1228

The House Committee on Ways and Means met at 1:00 p.m. on Tuesday, June 20, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Bowie, Buchanan, Cox, Decker, Eddins, Gibson, Haire, Jarrell, McCombs, Michaux, Morris, Oldham, Pope, Warren, Weiss, and Wilson. Reps. Ramsey and Redwine had excused absences. Rep. Nesbitt, Chairman, presided.

Rep. Nesbitt called the meeting to order and announced that the Committee Substitute for **S1316 (Professional Engineers/Land Surveyors Licensure)** *(See Attachment I)* was before the Committee. Senator Miller was present to speak on the bill.

Rep. Michaux moved to amend the bill. *(See Attachment II)*

Staff member Jeff Hudson explained that the proposed amendment added language that the Board may adopt rules regulating the operation of offices and places of business of corporations and business firms licensed under Section 3. G.S. 89C-24 to ensure that professional engineering and land surveying services are performed under the supervision of licensed professional engineers and land surveyors.

Upon conclusion of his explanation, Rep. Michaux moved for the adoption of the amendment and his motion passed.

Rep. Michaux moved to have the bill and amendment incorporated into a new committee substitute which changes title, give that bill a favorable report and the original bill an unfavorable report. The motion passed.

SB 1343 (Rural Internet Access Authority) introduced by Senator Reeves was before the Committee. *(See Attachment III)*

Senator Reeves was recognized to explained the bill. He said the bill was a direct outflow of two major efforts that have gone on over the past year. Last year the Joint Select Committee on Information Technology was created. Following on the off Session that Committee studied issues referred to as the digital gap that exists in certain areas of North Carolina. As part of that study in the off Session the Office of Information Technology Systems and the various telephone providers in this State to do a gap study for rural North Carolina. One issue as local dial-up service to the Internet. The second is high-speed issues. He said while Wake County is doing incredibly well in the new economy, this effort has not reached out into some rural parts of the State.

He said this is the type of things that North Carolinians have done in the past and something that should be done now. The facts exist. During off Session, MCNC sold a business and made a lot of money. They are planning of providing a minimum of $30 million to this effort. This is the reason to create the "Rural Internet Access Authority" to assign the authority of whom will receive these monies and to make certain that those monies are expended in a way that plug the gaps that exist in access to the Internet. Further, he said that there were other entities interested in putting funds into the effort as well.

Basically, the said the bill sets up an Authority made up of 21 people, it provides for 6 appointments by the Governor, 6 appointments by the House and 6 appointments by the Senate. *(See Attachment IV, Summary)*

Rep. Owens said this was something desperately in Eastern North Carolina and he supported the bill.

Rep. Michaux wanted to know where the $30 million would go. Extensive discussed followed regarding actual costs of this initiative as well as the powers that would be granted to this Authority.

Rep. Nesbitt wondered if the Authority would be subject to the Administrative Procedures Act.

Rep. Blue was asked to preside and he recognized Rep. Haire who moved to amend the bill to allow that community colleges could be providers.

No vote was taken and the bill was carried over to the Committee's next meeting.

The meeting adjourned at 1:55 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

6/14/2000 Adopted I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1316*
Judiciary II Committee Substitute Adopted 5/30/00
Third Edition Engrossed 5/31/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1316-CSSB-001
21:44:18 EZT / 6-JUN-00

ATTENTION: Line numbers may change after adoption.

Short Title: Professional Engineers/Land Surveyors Licensure.

(Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF CANDIDATES FOR ENGINEERING AND SURVEYING LICENSURE; TO CHANGE THE ANNUAL ENGINEERING AND SURVEYING LICENSE EXPIRATION DATE FOR BUSINESSES; AND TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ESTABLISH A LIMIT ON THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(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 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,~~ fee and documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam. A candidate with a combination of three failures or unexcused absences may only be considered by the Board for reexamination at the end of 12 ~~months.~~ months following the third failure or unexcused absence. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-7 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for 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 any evidence 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 seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of 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,~~ immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month ~~of January,~~ immediately following the month of expiration, 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 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the

individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for 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 licensees who have not effected their renewal by the first day of ~~February~~ the month immediately following the ~~date of their expiration.~~ renewal period. The Board may 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 the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each 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 3. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. 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 licensed by the Board and has paid 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 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. The Board may establish a limit on the number of separate offices or places of business for which an individual registrant may be responsible under this section.

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 4. This act is effective when it becomes law.

SENATE BILL 1316:
Professional Engineers/Land Surveyors Licensure

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Miller
Date:	June 7, 2000	**Summary by:**	Jeff Hudson,
Version:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 1316 requires an applicant who has failed an exam three times to present evidence that the applicant has taken actions to enhance his/her chances of passing the exam prior to reexamination; changes the license expiration date for businesses from December 31st to June 30th; and authorizes the Board of Examiners for Engineers and Land Surveyors to establish a limit on the number of places of business that a licensee may supervise.***

BACKGROUND: On April 13, 2000, the Rules Review Commission (RRC) objected to three rules adopted by the Board of Examiners for Engineers and Land Surveyors. Under G.S. 150B-21.8, the RRC reviews and may object to language in an agency's rule that is not being amended. The objections by the RRC to the Board's rules were to existing language in the rules. The Board has requested legislation to codify the substance of two of the disapproved rules and to give the Board specific statutory authority to properly adopt rules dealing with the subject matter of the third disapproved rule.

BILL ANALYSIS:

Section 1. Under current law, candidates for licensure who fail the licensing exam three times are eligible for re-examination after submitting a new application with the appropriate fee and may be considered for re-examination by the Board after 12 months. Section 1 of the bill would add a requirement that applicants for re-examination provide documented evidence of actions taken to enhance the applicant's likelihood of passing the exam.

Section 2. Under current law, all certificates of licensure expire December 31st of each year. Section 2 of the bill would change the license expiration date for business firms and corporations from December 31st to June 30th of each year. Other licenses would continue to expire on December 31st.

Section 3. Under current law, work done by business firms and corporations must be done under the responsible charge of individual registrants. There is no specific statutory authority, however, for the Board to adopt rules to limit the number of offices for which an individual registrant may be responsible. Section 3 of the bill would allow the Board to establish a limit on the number of offices that a licensee may supervise at any one time.

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

PROPOSED COMMITTEE SUBSTITUTE (S1316-CSSB-001): The Proposed Committee Substitute for Senate Bill 1316 (Third Edition) makes clarifying and conforming changes.

Note: Mary Shuping, Committee Staff to the Joint Legislative Administrative Procedure Oversight Committee, contributed to the preparation of this summary.

Attachment II II

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1316

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1316-ASB-002.01 Page 1 of 1

Date 6-20, 2000

Comm. Sub. [YES]
Amends Title [NO]
PCS S1316-CSSB-001 for the Third Edition

Representative Michaux

moves to amend the bill on page 3, lines 38 through 41, by rewriting those lines to read:
"of their design and supervision responsibilities. The Board may adopt rules regulating the operation of offices and places of business of corporations and business firms licensed under this section to ensure that professional engineering and land surveying services are performed under the supervision of licensed professional engineers and land surveyors."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 1343*
Information Technology Committee Substitute Adopted 6/7/00
Third Edition Engrossed 6/13/00

Short Title: Rural Internet Access Authority. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA RURAL INTERNET ACCESS AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2E. North Carolina Rural Internet Access Authority.

"**§ 143B-437.40. Short title and intent.**

This Part is the 'North Carolina Rural Internet Access Authority Act.' The General Assembly finds as follows:

(1) Access to computers and the Internet, along with the ability to effectively use these technologies, are becoming increasingly important for full participation in America's economic, political, and social life.

(2) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.

(3) In the digital age, universal connectivity at affordable prices is a necessity for business transactions, education and training, health care, government services, and the democratic process.

(4) Unequal access to computer technology and Internet connectivity by income, educational level and/or geography could deepen and reinforce the divisions that exist in our society.

(5) The intent of the Rural Internet Access Authority is to close this digital divide for the citizens of North Carolina.

"**§ 143B-437.41. Definitions.**

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Internet Access Authority.

(2) Commission. -- The governing body of the Authority.

(3) High-speed broadband Internet access. -- Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers.

(4) Rural county. -- A county with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

(5) Rural partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

"**§ 143B-437.42. Creation of Authority and Commission.**

(a) Creation. -- The North Carolina Rural Internet Access Authority is created within the Department of Commerce. The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access.

The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, contract with, direct, and supervise all personnel and consultants, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting. These functions of the Secretary of Commerce are ministerial and shall be performed only pursuant to the direction and policy of the Commission. The State Auditor has audit oversight of the Authority pursuant to Article 5A of Chapter 147 of the General Statutes.

(b) Commission. -- The Authority is governed by a Commission that consists of the following 21 members:

(1) Six members appointed by the Governor, as follows:

a. One named from the large incumbent local telephone exchange companies in North Carolina.

b. One from rural telephone cooperatives.

c. One from competing local telephone exchange companies certified by the North Carolina Utilities Commission.
d. One from Internet service providers doing business in North Carolina.
e. Two representing business and education or other users from rural counties.

(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, as follows:
a. One named from the large incumbent local telephone exchange companies in North Carolina.
b. One from commercial wireless communications carriers in North Carolina.
c. One representing MCNC.
d. One from rural partnerships.
e. Two representing business and education or other users from rural counties.

(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, as follows:
a. One named from the large incumbent local telephone exchange companies in North Carolina.
b. One from small independent telephone companies.
c. One from cable television companies doing business in rural counties.
d. One from rural partnerships.
e. Two representing business and education or other users from rural counties.

(4) The State's Chief Information Officer, who shall serve ex officio.

(5) Chair of the North Carolina Rural Economic Development Center, who shall serve ex officio.

(6) The Secretary of Commerce, who shall serve ex officio.

(c) Oath. -- As the holder of an office, each member of the Commission must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Commission member.

(d) Terms. -- The term of office of a member of the Commission is three years.

(e) Chair. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Commission. The Governor shall convene the first meeting of the Commission.

(f) Vacancies. -- All members of the Commission shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in

accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(g) Removal of Commission Members. -- The Governor may remove any member of the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Compensation of the Commission. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Commission or officers or other private persons. The members of the Commission shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(i) Staff. -- The Rural Economic Development Center, Inc., shall provide administrative and professional staff support for the Authority under contract.

"**§ 143B-437.43. Goals and duties of the Authority.**

(a) Duties. -- The Authority shall set specific targets and milestones to achieve the goals and objectives set out in subsection (b) of this section. The Authority shall coordinate activities, conduct or sponsor research, and recommend and advocate actions, including regulatory and legislative actions, to achieve its goals and objectives. The Authority shall also propose funding that may be needed from the Rural Redevelopment Authority established in Part 2D of this Article and from other appropriate sources for incentives for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(b) Goals. -- The goals and objectives of the Authority are:

(1) Local dial-up Internet access provided from every telephone exchange within one year.

(2) High-speed Internet access available to every citizen of North Carolina within three years, at prices in rural counties that are comparable to prices in urban North Carolina.

(3) Two model Telework Centers in either enterprise tier one or enterprise tier two area established by January 1, 2002. To the extent practicable, the Centers should be established in existing facilities.

(4) Significant increases in ownership of computers, related web devices, and Internet subscriptions promoted throughout North Carolina.

(5) Accurate, current, and complete information provided through the Internet to citizens about the availability of present telecommunications and Internet services with periodic updates on the future deployment of new telecommunications and Internet services.

(6) Development of government Internet applications promoted to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more

comprehensive programs including training, education, and health care.

(7) Open technology approaches employed to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias.

(c) Reports. -- The Authority must submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission.

"**§ 143B-437.44. Powers of Authority.**

The Authority shall have all necessary powers to carry out its duties including, but not limited to, accepting funds offered to it for accomplishing its duties and performing its administrative operations. The Authority may also advocate before the General Assembly draft legislation to further the goals of rural Internet access."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Rural Internet Access Authority created in Part 2E of Article 10 of Chapter 143B of the General Statutes."

Section 3. This act does not obligate the General Assembly to appropriate funds.

Section 4. This act is effective when it becomes law. The Rural Internet Access Authority created in this act is dissolved effective three years after the first meeting of its Commission. This act is repealed effective when the Rural Internet Access Authority is dissolved.

SENATE BILL 1343:
Rural Internet Access Authority

BILL ANALYSIS

Committee: House Ways and Means
Date: June 26, 2000
Version: S1343-CSRC-001.2
House Proposed Committee Substitute

Introduced by: Senator Reeves
Summary by: Kory Goldsmith
Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to SB 1343 creates the North Carolina Rural Internet Access Authority (RIAA). The purpose of the RIAA is to advise and make recommendations to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority regarding efforts to provide rural counties with high-speed broadband Internet access. The Authority dissolves on December 31, 2003.***

The Proposed Committee Substitute differs from the 3rd Edition as follows:

- Specifies that the RIAA is an advisory entity that is intended to serve as the central rural Internet access policy planning body for the State.
- Specifies that the RIAA's powers are: (1) to employ and supervise its personnel, (2) to apply for and accept funds to carry out its defined duties, and (3) to review and recommend changes in laws, rules and policies to further the RIAA's goals.
- Specifies the RIAA's duties are: (1) to develop and recommend a plan for rural Internet access, (2) to propose to the Rural Redevelopment Authority initiatives to be funded to meet the RIAA's goals and objectives, and (3) to set specific goals and targets.
- Stagger the terms of the 18 appointed members of the Commission. Nine of the appointments are for 3-year terms (evenly divided between the Governor, the House and the Senate), and nine of the appointments are for 1-year terms (also evenly divided between the appointing authorities). All appointments commence on August 1 of the year they are made. Also allows for successive appointments.
- Allows the North Carolina Rural Economic Development Center to provide professional and administrative staff.
- Sets December 31, 2003 as the date the Authority is terminated and the act repealed.

BILL ANALYSIS:

Section 1. - The bill adds a new Part 2E to Article 10 of Chapter 143B of the General Statutes.

G.S. 143B-437.40 – States the title of the act and states the findings of the General Assembly. These findings recognize the importance of access to technology for full participation in today's economy, that unequal access to technology and internet access may deepen existing societal divisions, and that it is the intent of the Rural Internet Access Authority to close the digital divide in North Carolina.

G.S. 143B-437.41 – Provides definitions applicable to the act. **"Commission"** refers to the governing board of the Authority. **"High-speed broadband Internet access"** means Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers. A "**rural county**" is a county in North Carolina with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

G.S. 143B-437.42 – Creates the Authority and the Commission. The Authority is created in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce, whose duties are ministerial and performed only pursuant to the direction and policy of the Commission. The Commission is composed of 21 members.

- 6 appointed by the Governor – one from the large incumbent local telephone exchange companies of North Carolina, one from a rural telephone cooperative, one from a competing local telephone exchange company, one from an Internet provider, and two business and education users in rural counties.
- 6 appointed by the House upon the recommendation of the Speaker – one from the large incumbent local telephone exchange companies of North Carolina, one from a commercial wireless communications carrier, one representing NCMC, one from a rural partnership, and two business and education users in rural counties.
- 6 appointed by the Senate upon the recommendation of the President Pro Tempore – one from the large incumbent local telephone exchange companies of North Carolina, one from a small independent telephone company, one from a cable television company, one from a rural partnership, and two business and education users in rural counties.
- The State's Chief Information Officer, ex officio.
- The Chair of the North Carolina Rural Economic Development Center, Inc., ex officio.
- The Secretary of Commerce, ex officio.

Half of the appointed members serve 3-year terms, and the other half serve 1-year terms. The authority that made the appointment fills vacancies. The Governor appoints one of the members as the Chair. The Rural Economic Development Center, Inc. may provide administrative and professional staff to the Commission.

G.S. 143B-437.43 – The powers and duties of the RIAA are set-out above under "Changes in Proposed Committee Substitute." The RIAA is directed to set specific targets and milestones to achieve its goals and objectives. These goals and objectives include:

- Providing local dial-up Internet access for every telephone exchange within 1 year.
- Providing high-speed Internet access to all NC citizens at comparable costs to urban rates within 3 years.
- The creation, by January 1, 2002, of 2 model Telework Centers in either enterprise tier one or enterprise tier two areas. *(Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capital income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than those in higher tiers. For example, enterprise tier one and two counties are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.)*
- Significant increases in computer ownership by North Carolina citizens.
- Accurate, current, and complete information provided via the Internet regarding the availability of Internet services.

- Development of government Internet applications to make citizen interactions with government agencies via the Internet more convenient and to facilitate the delivery of services via the Internet.

The Commission is required to provide quarterly reports on it progress to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations.

Section 2. – Amends G.S. 120-123 to prohibit the appointment of members of the Legislature to the Board.

Section 3. – Provides that nothing in the Act obligates the General Assembly to appropriate funds.

The Act is effective when it becomes law. The Rural Internet Access Authority is dissolved effective December 31, 2003. The act is repealed when the Authority is dissolved.

S1343-SMRC-001(House PCS)

Handout

Senate Bill 1343
Rural Internet Access Authority
Fact Sheet

Purpose

The Authority is responsible for meeting the goals and objectives reached in the agreement between the state's telecommunications companies. Two key objectives are to provide affordable high-speed Internet access to all North Carolinians within three years and local dial-up access to every telephone exchange within one year.

Membership

The Authority will consist of 21 members, six each to be appointed by the Governor, the President Pro Tem of the Senate and the Speaker of the House, and three ex officio members, including the state's Chief Information Officer, Chair of the North Carolina Rural Economic Development Center and the Secretary of Commerce.

Duties

The primary duties and responsibilities are to develop broad-based goals and statewide strategies and to plan, manage and oversee the work efforts for implementing projects for providing high-speed Internet access in the state's rural areas at rates comparable to those in its urban centers. This work includes:

- The development of overall strategies and master plans for achieving goals and objectives.
- The review, evaluation and selection of proposals from communications companies and Internet service providers for offering affordable Internet connectivity.
- The monitoring and quality assurance of all projects and efforts to ensure successful completion – on time, within budget, and delivery of the desired capabilities.
- The coordination of projects and work tasks to ensure goals and objectives are met in all rural areas and in the most cost-effective manner, especially the identification of best practices and common models that can be shared among projects and areas.
- The preparation and submission of progress, financial and other performance reports to provide accountability for expenditures and results.

Administrative

- The Authority will report administratively to the Department of Commerce and will be provided administrative and professional staff support from the Rural Economic Development Center.
- Administrative funding for the Authority will come through the Rural Redevelopment Authority, and its use will be subject to the reporting requirements outlined in that legislation.
- The Authority will sunset in three years.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 20, 2000**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie D. Horsley	DOA
Carolyn Maynard	DOA
Martha Glass	DOA
Jen Wilkins	DOA
Ed Renfrow	DSL
Lisa Canova	OSC
J. Stalcup	DHHS - VR
Matt Osborne	AOC
John Leastan	Purchase & Contract
Gretchen Kelly	Worldcom
Mark Walters	Office of the Governor
Barbara Levine	Office of the Governor
Denny McGuire	ITS/IRM
Pat LaBarbera	ITS
Tom Runkle	✓
Rick Webb	✓
Kim Hibbard	NCLM
Roy Hawley	ITS
Ed Codam	CCSP + Case/NE
John Doyle	CCSP
Suzanne Williams	NCCCS
Roger Martin	Rural Center
Linda Small	DEH
Susan Austin	DEH
Don Moore	[illegible]
K. Long	NCDOT assigned to ITS
R. Earl Wilms	NCHBA
Joanne Schoen	NC Nurses Association

House Committee
on
Ways and Means

Minutes
June 21, 2000
Room 1228

The House Committee on Ways and Means met at 10:00 a.m. on Wednesday June 21, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Blue, Bowie, Cox, Decker, Gibson, Haire, McCombs, Michaux, Morris, Oldham, Owens, Pope, Redwine, Thomas, Warren, Weiss, and Wilson. Reps. Buchanan, and Ramsey had excused absences. Rep. Nesbitt, Chairman, presided.

Rep. Nesbitt called the meeting to order and announced that **HB 1578 (Information Technology Governance)**, sponsored by Rep. Tolson, was before the Committee.

Rep. Tolson was recognized. He presented a proposed committee substitute to the Committee. Rep. Michaux moved for its adoption and the motion passed. (*See Attachment I)*

Rep. Tolson said the bill would transfer the Office of Information Technology Services from the Department of Commerce to the Office of the Governor, as recommended by the Joint Select Committee on Information Technology. The bill also makes changes in the membership of the Information Resource Management Commission, and amends the law regarding the procurement of information technology by State agencies.

State Auditor, Ralph Campbell, was recognized. He said he came wearing two hats, one as State Auditor and the other as Chairman of the Resource Management Commission. He praised the ITS Office and said he felt that the Governor's Office would be the appropriate place for this office.

Rep. Michaux sent forth a technical amendment and moved for its adoption. (*See Attachment II)* His motion passed.

The was concern about the appointment and confirmation process for the Chief Information Officer as laid out in the bill. To address Rep. Michaux moved to amend the bill regarding the Governor's appointment authority. His motion passed. *(See Attachment III)*

Rick Webb with the Department of Commerce and John Neesom, Director of the Division of Purchasing, were recognized and each spoke in favor of the bill.

There was discussion about the procurement process and how this bill would affect State agencies, as well as entities created by the Legislature that are not really State agencies. Rep. Tolson said that State agencies must purchase through ITS, but other

entities would have the opportunity to purchase through ITS. He said this should enhance the process for everyone.

Rep. Fox moved to amend the bill to add the "State Chief Information Officer, who shall be a non-voting member." The motion passed. *(See Attachment IV)*

Rep. Owens had concerns about moving the ITS office to the Governor's Office, thinks it has the potential to become too political.

Marvin Dorman from the State Budget Office spoke extensively about the placement of Information Technology Services in the Office of the Governor. He felt that it was appropriate to house ITS in the Governor's Office.

Rep. Michaux made a motion to incorporate the amendments with HB1578 to create a new committee substitute, to give the new bill favorable report and the original bill an unfavorable report. The motion passed.

The meeting adjourned at 10:50 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H1578-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1578
THIS IS A DRAFT 19-JUN-00 15:28:11
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Information Technology Governance. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE POWERS AND DUTIES OF THE SECRETARY OF COMMERCE REGARDING INFORMATION TECHNOLOGY MATTERS AND TO REESTABLISH THOSE POWERS AND DUTIES WITHIN THE OFFICE OF THE GOVERNOR, AND TO MAKE OTHER CHANGES IN THE LAWS REGARDING INFORMATION TECHNOLOGY RELATED STATE GOVERNMENT FUNCTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 16 of Article 10 of Chapter 143B of the General Statutes is repealed.

Section 2. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3D.

"Office of Information Technology Services.

"Part 1. Transfer and Organization of Office.

"**§ 147-33.75. Transfer to the Office of the Governor.**

(a) The Office of Information Technology Services ("Office") of the Department of Commerce and the Information Resource Management Commission are hereby transferred to the Office of the Governor by a Type II transfer, as defined in G.S. 143A-6.

(b) The Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article 1 of Chapter 143B of the General Statutes, G.S. 143A-6(b), and the Constitution and other laws of this State.

"§ 147-33.76. Head of the Office of Information Technology Services; qualification and appointment of State Chief Information Officer.

(a) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer. The State Chief Information Officer shall be qualified by education and experience for the office and shall be appointed by the Governor subject to review by the Senate Committee on Information Technology and the House Committee on Technology meeting jointly (or by similar committees designated by the rules of each house), and the Joint Legislative Commission on Governmental Operations.

(b) The Governor shall submit the name of the person to be appointed for review by the entities specified in subsection (a) of this section.

(c) The salary of the State Chief Information Officer shall be set by the General Assembly in the Current Operations Appropriations Act. The State Chief Information Officer shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act.

"§ 147-33.77. Office of Information Technology Services; organization and operation.

(a) The State Chief Information Officer may appoint a Chief Deputy Information Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief Information Officer may appoint all employees, including legal counsel, necessary to carry out the powers and duties of the office. These employees shall be subject to the State Personnel Act.

(b) All employees of the office shall be under the supervision, direction, and control of the State Chief Information Officer. Except as otherwise provided by this Article, the State Chief Information Officer may assign any function vested in the State

Chief Information Officer or the Office of Information Technology Services to any subordinate officer or employee of the office.

(c) The State Chief Information Officer may, subject to the provisions of G.S. 147-64.7(b)(2), obtain the services of independent public accountants, qualified management consultants, and other professional persons or experts to carry out powers and duties of the office.

(d) The State Chief Information Officer shall have legal custody of all books, papers, documents, and other records of the office.

(e) The State Chief Information Officer shall be responsible for the preparation of and the presentation of the office budget request, including all funds requested and all receipts expected for all elements of the budget.

(f) The State Chief Information Officer may adopt regulations for the administration of the office, the conduct of employees of the office, the distribution and performance of business, the performance of the functions assigned to the State Chief Information Officer and the Office of Information Technology Services, and the custody, use, and preservation of the records, documents, and property pertaining to the business of the office.

"**§ 147-33.78. Information Resource Management Commission.**

(a) Creation; Membership. -- The Information Resource Management Commission is established and shall be located within the Office for organizational, budgetary, and administrative purposes. The Commission consists of the following members:

(1) Four members of the Council of State, appointed by the Governor.

(2) The Secretary of State.

(3) The Secretary of Administration.

(4) The State Budget Officer.

(5) Two members of the Governor's cabinet, appointed by the Governor.

(6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(7) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(8) The Chair of the Information Technology Management Advisory Council.

(9) The Chair of the Criminal Justice Information Network Governing Board.

(10) The State Controller.

(11) The Director of the Administrative Office of the Courts or the Director's designee.

(12) The President of The University of North Carolina or the President's designee.

(13) The President of the Community Colleges System Office, or the President's designee.

(14) The Executive Director of the North Carolina League of Municipalities, or the Executive Director's designee, who shall be a nonvoting member.

(15) The Executive Director of the North Carolina Association of County Commissioners, or the Executive Director's designee, who shall be a nonvoting member.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The initial appointed members of the Commission shall be the members appointed to the Information Resource Management Commission who are serving unexpired terms as of July 1, 2000, who shall serve for a period equal to the remainder of their current terms on the Information Resource Management Commission. Upon the expiration of the current terms of the appointed members, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service on the Commission if they are no longer cabinet members. Members of the Council of State shall be disqualified from completing a term of service on

the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The State Chief Information Officer shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. -- The Commission has the following powers and duties:

(1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.

(2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

(3) To review and approve biennially the information technology plans of the executive agencies and the Administrative Office of the Courts. This review shall include plans for the procurement and use of personal computers and workstations.

(4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency and Administrative Office of the Courts information technology plans.

(5) To issue certification of any State agency information technology project that requires or is expected to require the expenditure of funds in excess of five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. The certification shall be issued when the

Commission determines that the project complies with Commission policies, standards, and procedures. The Commission shall promptly report each certification to the Office of State Budget and Management, the Office of the State Controller, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. No State agency, other than The University of North Carolina or any of its constituent institutions, shall allocate or expend funds in excess of five hundred thousand dollars ($500,000) on any information technology project without prior certification as required by this subsection. If an agency cannot determine whether a project or series of projects will require certification, the agency shall seek an opinion from the Commission. Upon review, the Commission may determine that a project is exempt from certification and shall advise the agency of its determination.

(6) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation. If at any time a certified agency information technology project is not in compliance with Commission policies, standards, or procedures, the Commission may suspend project certification and shall report the suspension to the Office of the State Controller, the Office of State Budget and Management, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. Upon recommendation of the Commission, the Joint Legislative Commission on Governmental Operations may request the State Budget Office and the State Controller to take appropriate remedial action, up to and including the suspension of appropriations or the nonrelease of funds to the project.

(7) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.

(8) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.

(9) To develop and promote technical requirements for the fair and competitive procurement of information technology in cooperation with the Office of Information Technology Services where different information technology hardware, software, and networks operate together easily and reliably, while considering the cost-effectiveness of managing these assets.

(c) Meetings. -- The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly.

"**§ 147-33.79. Information Resources Management Commission staff.**

(a) There is established in the Office an independent staff for the Information Resources Management Commission. The staff shall consist of an executive director and such other professional, administrative, technical, and clerical personnel as authorized by the General Assembly as may be necessary to assist the Commission in carrying out its powers and duties.

(b) All independent staff shall be appointed, supervised, and directed by the Commission. The executive director shall be exempt from the provisions of Chapter 126 of the General Statutes, except for Articles 6 and 7 of Chapter 126 of the General Statutes. All other staff personnel shall be subject to the provisions of Chapter 126 of the General Statutes. The independent staff shall not be subject to the supervision, direction, or control of the Office.

(c) Except for the executive director, salaries and compensation of all staff personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) Expenses of the Commission and the salaries of the independent staff shall be paid out of funds from receipts

available to the Office of Information Technology Services as requested by the Commission.

"Part 2. General Powers and Duties.

"**§ 147-33.80. Exempt agencies.**

Except as otherwise specifically provided by law, this Article shall not apply to the General Assembly or The University of North Carolina and its constituent institutions."

"**§ 147-33.81. Definitions.**

As used in this Article:

(1) "Distributed information technology assets" means hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks (LANs), servers, mobile computers, peripheral equipment, and other related hardware and software items.

(2) "Information technology" means electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.

(3) "Information technology enterprise management" means a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized.

(4) "Information technology portfolio management" means a business-based approach for analyzing and ranking potential technology investments and selecting those investments that are the most cost-effective in supporting the strategic business and program objectives of the agency.

(5) "Office" means the Office of Information Technology Services as established in this Article.

"**§ 147-33.82. Powers and duties of the Office of Information Technology Services.**

(a) The Office of Information Technology Services shall:

(1) Procure all information technology for State agencies, as provided in Part 4 of this Article. The University of North Carolina and its constituent institutions, and the Judicial Department, may elect to participate in information technology procurement under this Article or may obtain information technology in compliance with Department of Administration requirements.

(2) Submit for approval of the Information Resources Management Commission all rates and fees for common, shared State government-wide technology services provided by the Office.

(3) Submit for approval of the Information Resources Management Commission recommended State government-wide, enterprise-level policies for information technology.

(4) Develop standards, procedures, and processes to implement policies approved by the Information Resources Management Commission.

(5) Assure that State agencies implement and manage information technology portfolio-based management of State information technology resources, in accordance with the direction set by the State Chief Information Officer.

(6) Assure that State agencies implement and manage information technology enterprise management efforts of State government, in accordance with the direction set by the State Chief Information Officer.

(7) Provide recommendations to the Information Resources Management Commission for its biennial technology strategy and to develop State government-wide technology initiatives to be approved by the Information Resources Management Commission.

(8) Develop a project management, quality assurance, and architectural review process that adheres to the Information Resources Management Commission's

certification program and portfolio-based management initiative.

(9) Establish and utilize the Information Technology Management Advisory Council to consist of representatives from other State agencies to advise the Office on information technology business management and technology matters.

(b) Notwithstanding any other provision of law, local governmental entities may use the information technology programs, services, or contracts offered by the Office in accordance with the statutes, policies, and rules of the Office. For purposes of this subsection, 'local governmental entities' includes local school administrative units, as defined in G.S. 115C-5, and community colleges. Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office. Any other State entities, including the University of North Carolina and its constituent institutions, may also us the information technology programs, services, or contracts offered by the Office, including information technology procurement, in accordance with the statutes, policies, and rules of the Office.

"§ 147-33.83. Information resources centers and services.

(a) With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the Office of Information Technology Services shall have all of the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services.

(2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services.

(3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Office ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services.

(4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network.

(5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this section to facilitate more efficient and economic use of information technology in these departments.

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

(7) To provide cities, counties, and other local governmental units with access to Office of Information Technology Services information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this section until safeguards for the data's security satisfactory to the department head and the State Chief Information Officer have been designed and installed and are fully operational. Nothing in this section may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program

authority and responsibility of the department. This section does not affect the provisions of G.S. 147-64.6, 147-64.7, or 147-33.89. Notwithstanding any other provision of law, the Office of Information Technology Services shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission.

"**§ 147-33.84. Deviations authorized for Department of Revenue.**

(a) The Department of Revenue is authorized to deviate from any provision in G.S. 147-33.83(a) that requires departments or agencies to consolidate information processing functions on equipment owned, controlled, or under custody of the Office of Information Technology Services. All deviations pursuant to this section shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding.

(b) The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements, and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the Office of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

(c) The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted

practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

"§ 147-33.85. Information technology portfolio-based management.

(a) The purposes of information technology portfolio-based management are to:

(1) Ensure agencies link agency information technology investments with business plans.

(2) Facilitate risk assessment of information technology projects and investments.

(3) Ensure agencies justify information technology investments on the basis of sound business cases.

(4) Ensure agencies facilitate development and review of information technology performance related to business operations.

(5) Identify projects that can cross agency and program lines in order to leverage resources.

(6) Assist in State government-wide planning for common, shared information technology infrastructure.

(b) The Office shall coordinate with the Office of State Budget and Management and the Office of State Planning to integrate agency strategic and business planning, technology planning and budgeting, and project expenditure processes into the Office's information technology portfolio-based management. The Office shall provide recommendations for agency annual budget requests for information technology investments, projects, and initiatives to the Office of State Budget and Management.

(c) In cooperation with State agencies, the Office shall conduct and maintain a continuous inventory of each State agency's current and planned investments in information technology, a compilation of information about these assets, and the total life cycle costs of these assets. In implementing the provisions of this subsection, the Office shall submit State government-wide policies for review and approval to the Information Resources Management Commission. The Office shall consult with the Office of the State Controller to establish and implement the State government-wide information technology inventory. The Office shall develop and implement State

government-wide standards, processes, and procedures for the required inventory and for the management of the State government-wide information technology portfolio. State agencies shall participate in the information technology portfolio management and shall comply with the standards and processes established by the Office in accordance with this subsection. The provisions of this subsection shall not relieve any department, institution, or agency of the State government from accountability for equipment, materials, supplies, and tangible and intangible personal property under its control.

(d) No State agency information technology project shall proceed without the prior certification by the Information Resources Management Commission of the project. The Information Resources Management Commission may establish thresholds at an agency level based on project cost, potential project risk, or agency size and budget.

"**§ 147-33.86. Enterprise management of information technology assets.**

(a) The purpose of enterprise management is to create a plan and implement a State government-wide approach for managing distributed information technology assets to minimize total life cycle costs of assets, defined as total ownership costs from acquisition through retirement, while realizing maximum benefits for transacting the State's business and delivering services to its citizens.

(b) With input and recommendations from State agencies, the Office shall develop a plan for the State government-wide management of distributed information technology assets. The plan shall prescribe the State government-wide infrastructure and services for managing these assets. The plan shall be submitted to the Information Resources Management Commission for approval.

(c) Upon receiving approval by the Information Resources Management Commission, the Office shall ensure agency implementation of the plan, including the development of appropriate standards, processes, and procedures. The implementation effort shall follow Information Resources Management Commission project reporting policies. State agencies must participate in the enterprise management of information technology assets and must comply with the standards and processes of the Office.

"**§ 147-33.87. Financial reporting and accountability for information technology investments and expenditures.**

The Office of Information Technology Services, the Office of State Budget and Management, and the Office of the State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of funding for each. This system must integrate seamlessly with the enterprise portfolio management system. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget and Management and the Office of the State Controller, and submitted to the Governor, General Assembly, and the Information Resources Management Commission on or before October 1 of each year.

"**§ 147-33.88. Information technology reports.**

(a) The Office shall develop an annual budget for review and approval by the Information Resources Management Commission prior to April 1 of each year. A copy of the approved budget shall be submitted to the Joint Select Committee on Information Technology and the Fiscal Research Division.

(b) The Office shall report to the Joint Select Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line-item detail on expenditures from the previous quarter and anticipated expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes.

"Part 3. Telecommunications Services.

"**§ 147-33.89. Telecommunications services; duties of State Chief Information Officer with respect to State agencies.**

With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that

responsibility, the State Chief Information Officer may in cooperation with affected State agency heads, do such of the following things as the State Chief Information Officer deems necessary and advisable:

(1) Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
   a. Central telephone systems and telephone networks;
   b. Teleprocessing systems;
   c. Teletype and facsimile services;
   d. Satellite services;
   e. Closed-circuit TV systems;
   f. Two-way radio systems;
   g. Microwave systems; and
   h. Related systems based on telecommunication technologies.

(2) With the approval of the Information Resources Management Commission, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this subsection.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

(6) Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the

procurement of telecommunications systems or services.

(7) Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.

(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.

The provisions of this section shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

"**§ 147-33.90. Telecommunications services for local governmental units and other entities.**

(a) The State Chief Information Officer shall provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under G.S. 147-33.89 for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(b) The State Chief Information Officer shall establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

(2) MCNC.

(3) Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to

share the switched broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer.

"Part 4. Procurement of Information Technology.

"**§ 147-33.91. Procurement of information technology.**

(a) Notwithstanding any other provision of law, the Office of Information Technology Services shall procure all information technology for State agencies. For purposes of this section, agency means any department, institution, commission, committee, board, division, bureau, office, officer, or official of the State, unless specifically exempted in this Article. The University of North Carolina and its constituent institutions, and the Judicial Department, may elect to participate in information technology procurement under this Part or may obtain information technology in compliance with Department of Administration requirements. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective. Responses to solicitations and all information and documentation relative to the development of a contractual document shall be deemed confidential in nature and may be made a matter of public record after the contract is awarded. Award information determined by the State Chief Information Officer to be confidential due to the nature of the purchase, such as security or privacy-related information, shall remain confidential.

(b) The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

(1) Purchase or to contract for, by suitable means in conformity with G.S. 143-135.9, all information technology in the State government, or any of its departments, institutions, or agencies covered by this Part, or to authorize any department, institution, or agency covered by this Part to purchase or contract for such information technology.

(2) Establish processes, specifications, and standards which shall apply to all information technology to be purchased, licensed, or leased in the State government or any of its departments, institutions, or agencies covered by this Part.

(3) Comply with the State government-wide technical architecture, as required by the Information Resources Management Commission.

"§ 147-33.92. Restriction on State agency contractual authority with regard to information technology; local governments.

(a) All State agencies covered by this Part shall use contracts for information technology acquired by the Office for any information technology required by the State agency that is provided by these contracts. Notwithstanding any other statute, the authority of State agencies to procure or obtain information technology shall be subject to compliance with the provisions of this Part. The Office shall have the authority to exercise the authority of State agencies to procure or obtain information technology as otherwise provided by statute.

(b) Local governmental entities are not required to comply with otherwise applicable competitive bidding requirements when using contracts offered by the Office.

"§ 147-33.93. Information technology procurement policy; reporting requirements.

(a) Policy. -- In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(b) Reporting. -- Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office.

"§ 147-33.94. Unauthorized use of public purchase or contract procedures for private benefit prohibited.

(a) It shall be unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

(1) The department, institution, or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution, or agency involved, or the public benefit or convenience; and

(2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.

(c) Any violation of this section is a Class 1 misdemeanor.

"§ 147-33.95. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the State Chief Information Officer nor the Chief Deputy State Information Officer shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government, or any of its departments, institutions, or agencies, nor shall either of these persons or any other Office employee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Violation of this section is a Class F felony, and any person found guilty of a violation of this section shall, upon conviction, be removed from State office or employment.

"§ 147-33.96. Certification that information technology bid submitted without collusion.

The Office shall require bidders to certify that each bid on information technology contracts overseen by the Office is submitted competitively and without collusion. False certification is a Class I felony.

"§ 147-33.97. Board of Awards review.

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the Chief State Information Officer, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture as established by the Information Resources Management Commission.

"§ 147-33.98. Penalty for violations; costs.

Any employee or official of the State who violates this Part shall be liable to the State to repay any amount expended in violation of this Part, together with any court costs.

"§ 147-33.99. Attorney General contract assistance; rule-making authority.

(a) At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

(b) The State Chief Information Officer is authorized to adopt rules deemed necessary to implement the provisions of this Part."

Section 3. This act becomes effective July 1, 2000.

HOUSE BILL 1578: INFORMATION TECHNOLOGY GOVERNANCE

BILL ANALYSIS

Committee:	House Ways & Means	**Introduced by:**	Rep. Joe Tolson
Date:	June 19, 2000	**Summary by:**	Brenda J. Carter, Staff Atty. Research Division
Version:	H1578-CSRV-001		

SUMMARY: ***House Bill 1578 would transfer the Office of Information Technology Services from the Department of Commerce to the Office of the Governor, as recommended by the Joint Select Committee on Information Technology. The bill also makes changes in the membership of the Information Resource Management Commission, and amends the law regarding the procurement of information technology by State agencies.***

CURRENT LAW: The Office of Information Technology Services (ITS) is currently a division of the Department of Commerce. The Office is managed by the State Chief Information Officer, who is appointed by the Secretary of Commerce. ITS provides shared information technology services for state agencies and other governmental units in the areas of information processing, telecommunications, systems development, and information technology procurement. ITS is a centralized, cost-shared technology service provider that operates and maintains shared resources to serve all agencies in state and local government.

The Information Resource Management Commission (IRMC), with its independent staff, is administratively located in the Department of Commerce. Pursuant to G.S. 143B-472.41, the IRMC is responsible for establishing statewide technology policy and direction, providing oversight for all major technology projects in the executive branch, and developing technology quality assurance programs.

BACKGROUND: In 1983 the North Carolina General Assembly established State Information Processing Services (SIPS) "in recognition of the need to better manage the acquisition and use of information technology in general state government." Originally a part of the North Carolina Department of Administration, SIPS became a division of the Office of the State Controller (OSC) on March 1, 1987 by an executive order signed by Governor James Martin. On June 4, 1997, Governor Jim Hunt signed Senate Bill 869, transferring the OSC's information technology services, including SIPS, to the North Carolina Department of Commerce.

Legislation passed by the General Assembly in 1999 formally established the Office of Information Technology Services (ITS) as a division of the Department of Commerce, and provided for the Office of Information Technology Services to be managed and administered by the State Chief Information Officer (CIO). The State CIO is appointed by the Secretary of Commerce and reports to the Secretary. At the time this legislation was enacted, several other changes were made that were designed to centralize state government information technology management under the new Office of ITS. The legislation was designed to implement procurement reform for all State IT purchases, implement a business approach to IT management by developing a portfolio-based program, and provide for improved financial reporting & accountability of IT investments and expenditures, and improved management of IT assets by developing a statewide management approach. The 1999 legislation also directed the Joint Select Committee on Information Technology to study where in State government the centralized agency to manage State government wide information technology should be located. This bill is a recommendation of that study.

BILL ANALYSIS: ***The primary thing that the bill does is transfer the Office of Information Technology Services from the Department of Commerce to the Office of the Governor.*** As a result, most of the bill is simply transfering the existing law from Article 10 of Chapter 143B to Chapter 147. Consequently, this analysis will point out the substantve changes that are proposed in this legislation.

The bill would enact Article 3D of Chapter 147 of the General Statutes, Office of Information Technology Services.

Part 1 ***provides for the transfer and organization of the Office of Information Technology Services (ITS) and the Information Resource Management Commission (IRMC).*** ITS will be managed and administered by the State Chief Information Officer, who would be appointed by the Governor subject to review by the Senate and House Committees on Technology and the Joint Legislative Commission on Governmental Operations. The bill provides for the appointment of a Chief Deputy Information Officer and other employees to carry out the functions of the office.

The membership of the IRMC is amended in the bill. Current law provides that the terms of the Secretary of State and the State Controller will expire on June 30, 2001; this bill removes the sunset. The bill eliminates the Chair of the Governor's Committee on Data Processing and Information Systems as a member of the IRMC, and adds as non-voting members the Executive Directors of the N.C. League of Municipalities and the N. C. Association of County Commissioners or their designees.

Part 2 ***sets out the general powers and duties of the Office of Information Technology Services.*** This portion of the bill makes no substantive changes, it merely reformats existing law.

Part 3 ***sets out the powers and duties of the Office of Information Technology Services with regard to telecommunications services.*** Again, this portion of the bill makes no substantive changes, it merely reformats existing law.

Part 4 ***sets out the powers and duties of the Office of Information Technology Services with regard to procurement of information technology.*** This portion of the bill reformats existing law, but also makes other technical and clarifying changes (identical to changes proposed in House Bill 1564) Under current law, ITS has the authority to procure all information technology for State agencies except the General Assembly and the University of North Carolina and its constituent institutions. State agencies and local governmental entities are authorized to use programs, services, and contracts offered by ITS in accordance with rules and policies adopted by the Information Resource Management Commission (IRMC). *The bill makes it clear that the University of North Carolina and its constituent institutions and the Judicial Department (AOC) may elect to participate in information technology procurement through ITS or they may comply with Department of Administration purchase & contract requirements. The bill also makes it clear that local governmental entities including local school administrative units and community colleges, and other State entitities including the UNC system and its constituent institutions, may use the information technology programs and services of ITS, including procurement; local governmental entities are not required to comply with otherwise applicable competitive bidding requirements.*

The bill would become effective July 1, 2000.

Attachment II

II

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1578

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

H1578-ARV-002

Date 6-21 ,2000

Comm. Sub. [YES]
Amends Title []
H1578-CSRV-001

Representative Michaux

moves to amend the bill on page 10, line 10, by inserting a comma after the word "Office", and inserting the phrase "including information technology procurement,";

and on page 10, line 25, by inserting after the word "Carolina" and before the comma the following: "if they do not elect at their option to participate"

and on page 19, line 25, by deleting the word "may" and substituting the word "shall".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment III

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1578 DATE 6-21-2000

S. B. No. _____ Amendment No. 2 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X H1578-CSRV-001

Rep.) Micheaux
Sen.)

1 moves to amend the bill on page 2, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "the Governor, after consultation with
6 the Senate Committee on";
7
8 and on pg. 2, lines 16-17 by
9 rewriting the line to read:
10 "of each house)."
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 AMENDMENT

Attachment IV

IV

(Please type or use ballpoint pen)

H. B. No. 1578

S. B. No. _____

DATE 6-21-2000

Amendment No. 3

(to be filled in by Principal Clerk)

(Rep.) Fox

Sen.)

moves to amend the bill on page 4, line s 24 and 25

by inserting between those lines:

"(16) The State Chief Information Officer, who shall be a nonvoting member."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

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

VISITOR REGISTRATION SHEET

6-21-00

~~Appropriations~~ Ways & Means ~~July 6, 1999~~

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mi. Hon Byrd	Councilman - Town of Fletcher
Josh McLaughlin	Citizen
Ed Crumpton	OSC
Kim Hubbard	NCLM
Matt Osborne	AOC
Gary Walker	Auctev
Barbara Levine	Governor's Office
Mark Walters	Office of the Governor
Glenn Lamm	U.T.U.
Richard Westbrook	UTU
[illegible]	Capitol Group
Rick Webb	ETS
Margaret Westbrook	Microsoft
Jeff Van Dyke	BellSouth
Perri Morgan	NFIB
[illegible]	[illegible]
[illegible]	AT&T
Gretchen Kelly	Worldcom
Mark Dula	North State Tel. Co.
Bob Wells	NCTA
John Leaston	PRC
Rob Rhinehardt	T&C
Ed Little	PTC
[illegible]	NCTA

House Committee
on
Ways and Means

Minutes
June 21, 2000
Room 1228

The House Committee on Ways and Means met at 1:00 p.m. on Wednesday, June 21, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Buchanan, Cox, Decker, Eddins, Gibson, Haire, Jarrell, Michaux, Morris, Oldham, Pope, Redwine, Warren, Weiss, and Wilson. Ex-Officio member, Rep. Cunningham was also in attendance. Reps. Ramsey had an excused absence. Rep. Nesbitt, Chairman, presided.

Rep. Nesbitt called the meeting to order and announced that **SB 1343 (Rural Internet Access Authority)**, sponsored by Senator Reeves, was before the Committee. In Senator Reeves' absence, Rep. Joe Tolson, was present to explain the bill. Rep. Tolson sponsored the House companion bill (HB 1611). *(See Attachment I)*

There was an amendment sent forth from Rep. Haire at a previous meeting that was pending. Rep. Pope also moved to amend the bill by rewriting the language on Creation and Powers, duties, and goals of the Authority.

Billy Ray Hall from the Rural Center was recognized. He said that all the Rural Center had to do with this was to supply staffing. The Authority would decide where the money would go.

Rep. Nesbitt told Mr. Hall that at the last meeting members were told that this Authority would be advisory Committee, that the Rural Center would receive the MCNC funds and the Authority would work in an advisory capacity.

Rep. Tolson said this Authority will help develop plans using staff of the Rural Center and the funds would go to Rural Re-Development Authority. This group just deals with the connectivity part.

Rep. Michaux had concerns about funding. Where would additional money come from, if needed. Rep. Tolson said it could come from many sources, gifts and/or grants.

Rep. Pope withdrew his amendment.

Rep. Nesbitt stated his interpretation of the bill. The Rural Center would offer staffing to Rural Internet Access Authority. Rural Internet Access Authority would meet and see what it would take to wire the State. The money (from MCNC) will go to Rural Re-Development Authority. The Rural Redevelopment Authority would have to do as the Authority directed. Also, the Rural Internet Authority could receive money.

Secretary Rick Carlyle from the Department of Commerce spoke about the Authority and his interpretation of what the bill would do.

Discussion continued. Rep. Nesbitt appointed Reps. Blue, Pope, Michaux, Cox, Haire, and Decker as members of a subcommittee study the bill further.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 1343*
Information Technology Committee Substitute Adopted 6/7/00
Third Edition Engrossed 6/13/00

Short Title: Rural Internet Access Authority. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA RURAL INTERNET ACCESS AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2E. North Carolina Rural Internet Access Authority.

"**§ 143B-437.40. Short title and intent.**

This Part is the 'North Carolina Rural Internet Access Authority Act.' The General Assembly finds as follows:

(1) Access to computers and the Internet, along with the ability to effectively use these technologies, are becoming increasingly important for full participation in America's economic, political, and social life.

(2) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.

(3) In the digital age, universal connectivity at affordable prices is a necessity for business transactions, education and training, health care, government services, and the democratic process.

(4) Unequal access to computer technology and Internet connectivity by income, educational level and/or geography could deepen and reinforce the divisions that exist in our society.

(5) The intent of the Rural Internet Access Authority is to close this digital divide for the citizens of North Carolina.

"**§ 143B-437.41. Definitions.**

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Internet Access Authority.

(2) Commission. -- The governing body of the Authority.

(3) High-speed broadband Internet access. -- Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers.

(4) Rural county. -- A county with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

(5) Rural partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

"**§ 143B-437.42. Creation of Authority and Commission.**

(a) Creation. -- The North Carolina Rural Internet Access Authority is created within the Department of Commerce. The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access.

The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, contract with, direct, and supervise all personnel and consultants, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting. These functions of the Secretary of Commerce are ministerial and shall be performed only pursuant to the direction and policy of the Commission. The State Auditor has audit oversight of the Authority pursuant to Article 5A of Chapter 147 of the General Statutes.

(b) Commission. -- The Authority is governed by a Commission that consists of the following 21 members:

(1) Six members appointed by the Governor, as follows:

a. One named from the large incumbent local telephone exchange companies in North Carolina.

b. One from rural telephone cooperatives.

c. One from competing local telephone exchange companies certified by the North Carolina Utilities Commission.
d. One from Internet service providers doing business in North Carolina.
e. Two representing business and education or other users from rural counties.

(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, as follows:
a. One named from the large incumbent local telephone exchange companies in North Carolina.
b. One from commercial wireless communications carriers in North Carolina.
c. One representing MCNC.
d. One from rural partnerships.
e. Two representing business and education or other users from rural counties.

(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, as follows:
a. One named from the large incumbent local telephone exchange companies in North Carolina.
b. One from small independent telephone companies.
c. One from cable television companies doing business in rural counties.
d. One from rural partnerships.
e. Two representing business and education or other users from rural counties.

(4) The State's Chief Information Officer, who shall serve ex officio.

(5) Chair of the North Carolina Rural Economic Development Center, who shall serve ex officio.

(6) The Secretary of Commerce, who shall serve ex officio.

(c) Oath. -- As the holder of an office, each member of the Commission must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Commission member.

(d) Terms. -- The term of office of a member of the Commission is three years.

(e) Chair. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Commission. The Governor shall convene the first meeting of the Commission.

(f) Vacancies. -- All members of the Commission shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in

accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(g) Removal of Commission Members. -- The Governor may remove any member of the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Compensation of the Commission. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Commission or officers or other private persons. The members of the Commission shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(i) Staff. -- The Rural Economic Development Center, Inc., shall provide administrative and professional staff support for the Authority under contract.

"**§ 143B-437.43. Goals and duties of the Authority.**

(a) Duties. -- The Authority shall set specific targets and milestones to achieve the goals and objectives set out in subsection (b) of this section. The Authority shall coordinate activities, conduct or sponsor research, and recommend and advocate actions, including regulatory and legislative actions, to achieve its goals and objectives. The Authority shall also propose funding that may be needed from the Rural Redevelopment Authority established in Part 2D of this Article and from other appropriate sources for incentives for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(b) Goals. -- The goals and objectives of the Authority are:

(1) Local dial-up Internet access provided from every telephone exchange within one year.

(2) High-speed Internet access available to every citizen of North Carolina within three years, at prices in rural counties that are comparable to prices in urban North Carolina.

(3) Two model Telework Centers in either enterprise tier one or enterprise tier two area established by January 1, 2002. To the extent practicable, the Centers should be established in existing facilities.

(4) Significant increases in ownership of computers, related web devices, and Internet subscriptions promoted throughout North Carolina.

(5) Accurate, current, and complete information provided through the Internet to citizens about the availability of present telecommunications and Internet services with periodic updates on the future deployment of new telecommunications and Internet services.

(6) Development of government Internet applications promoted to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more

comprehensive programs including training, education, and health care.

(7) Open technology approaches employed to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias.

(c) Reports. -- The Authority must submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission.

"**§ 143B-437.44. Powers of Authority.**

The Authority shall have all necessary powers to carry out its duties including, but not limited to, accepting funds offered to it for accomplishing its duties and performing its administrative operations. The Authority may also advocate before the General Assembly draft legislation to further the goals of rural Internet access."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The Rural Internet Access Authority created in Part 2E of Article 10 of Chapter 143B of the General Statutes."

Section 3. This act does not obligate the General Assembly to appropriate funds.

Section 4. This act is effective when it becomes law. The Rural Internet Access Authority created in this act is dissolved effective three years after the first meeting of its Commission. This act is repealed effective when the Rural Internet Access Authority is dissolved.

SENATE BILL 1343:
Rural Internet Access Authority

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator ~~Miller~~ Reeves
Date:	June 20, 2000	**Summary by:**	Kory Goldsmith
Version:	Third Edition		Committee Counsel

SUMMARY: ***SB 1343 creates the North Carolina Rural Internet Access Authority to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access. The Authority dissolves 3 years after its first meeting.***

BILL ANALYSIS:

Section 1. - The bill adds a new Part 2E to Article 10 of Chapter 143B of the General Statutes.

G.S. 143B-437.40 – States the title of the act and states the findings of the General Assembly. These findings recognize the importance of access to technology for full participation in today's economy, that unequal access to technology and internet access may deepen existing societal divisions, and that it is the intent of the Rural Internet Access Authority to close the digital divide in North Carolina.

G.S. 143B-437.41 – Provides definitions applicable to the act. **"Commission"** refers to the governing board of the Authority. **"High-speed broadband Internet access"** means Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers. A "**rural county**" is a county in North Carolina with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

G.S. 143B-437.42 – Creates the Authority and the Commission. The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed Internet access. The Authority is created in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce, whose duties are ministerial and performed only pursuant to the direction and policy of the Commission. The Commission is composed of 21 members.

- 6 appointed by the Governor – one from the large incumbent local telephone exchange companies of North Carolina, one from a rural telephone cooperative, one from a competing local telephone exchange company, one from an Internet provider, and two business and education users in rural counties.
- 6 appointed by the House upon the recommendation of the Speaker – one from the large incumbent local telephone exchange companies of North Carolina, one from a commercial wireless communications carrier, one representing NCMC, one from a rural partnership, and two business and education users in rural counties.
- 6 appointed by the Senate upon the recommendation of the President Pro Tempore – one from the large incumbent local telephone exchange companies of North Carolina, one from a small independent telephone company, one from a cable television company, one from a rural partnership, and two business and education users in rural counties.
- The State's Chief Information Officer, ex officio.
- The Chair of the North Carolina Rural Economic Development Center, Inc., ex officio.

- The Secretary of Commerce, ex officio.

Members serve 3-year terms. The authority that made the appointment fills vacancies. The Governor appoints one of the members as the Chair. The Rural Economic Development Center, Inc. is directed to provide administrative and professional staff to the Commission.

G.S. 143B-437.43 – The Authority is directed to set specific targets and milestones to achieve its goals and objectives. These goals and objectives include:

- Providing local dial-up Internet access for every telephone exchange within 1 year.
- Providing high-speed Internet access to all NC citizens at comparable costs to urban rates within 3 years.
- The creation, by January 1, 2002, of 2 model Telework Centers in either enterprise tier one or enterprise tier two areas. *(Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capital income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than those in higher tiers. For example, enterprise tier one and two counties are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.)*
- Significant increases in computer ownership by North Carolina citizens.
- Accurate, current, and complete information provided via the Internet regarding the availability of Internet services.
- Development of government Internet applications to make citizen interactions with government agencies via the Internet more convenient and to facilitate the delivery of services via the Internet.

The Commission is required to provide quarterly reports on it progress to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations.

G.S. 143B-437.44 – Grants to the Authority all necessary powers to carry out is duties including accepting funds. The Authority may also advocate before the General Assembly draft legislation to further the goals of rural Internet access.

Section 2. – Amends G.S. 120-123 to prohibit the appointment of members of the Legislature to the Board.

Section 3. – Provides that nothing in the Act obligates the General Assembly to appropriate funds.

The Act is effective when it becomes law. The Rural Internet Access Authority is dissolved 3 years after the first meeting of the Commission. The act is repealed when the Authority is dissolved.

S1343-SMRC-001(3rd Edition)

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1343

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

S1343-ARC-001.1 Page 1 of __

Date_____,2000

Comm. Sub. [YES]
Amends Title []
Third Edition

Rep. Pope

moves to amend the bill on page 2, lines 26-38, by rewriting the lines to read:

"(a) Creation. -- The North Carolina Rural Internet Access Authority is created within the Department of Commerce, and except as otherwise provided in this Part, the powers, duties and goals of the Authority shall be as prescribed by the Secretary of Commerce. The purpose of the Authority is to advise and make recommendations to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority, regarding efforts to provide rural counties with high-speed broadband Internet access. The Authority shall serve as the central rural Internet access policy planning body of the State and shall communicate and coordinate with State, regional, and local agencies, and private entities in order to implement a coordinated rural Internet access policy.;

and on page 4, lines 14 through 23, by rewriting the lines to read:

"'§ 143B-437.43. Powers, duties, and goals of the Authority.

(a) Powers. -- The Authority shall have the following powers:

(1) To employ, contract with, direct, and supervise all personnel and consultants.

(2) To apply for, accept, and utilize grants, contributions and appropriations in order to carry out is duties as defined in this Part.

(3) To review and recommend changes in all laws, rules, programs and policies of this State or any agency or subdivision thereof to further the goals of rural Internet access.

(b) Duties. -- The Authority shall have the following duties:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1343

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

S1343-ARC-001.1 Page 2 of __

(1) To develop and recommend to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority a plan to provide rural counties with high-speed broadband Internet access. The plan may include recommendations for the coordination of activities, the commencement of research, and the advocacy of regulatory and legislative actions in order to achieve the goals and objectives of the Authority.

(2) To propose funding that may be needed from the North Carolina Rural Redevelopment Authority established in Part 2D of this Article and from other appropriate sources for incentives for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(3) To set specific targets and milestones to achieve the goals and objectives set out in subsection (c) of this section.

(c) Goals. -- The goals and objectives of the Authority are:";

and on page 5, by deleting lines 12-16.

Senate Bill 1343
Rural Internet Access Authority
Fact Sheet

Purpose

The Authority is responsible for meeting the goals and objectives reached in the agreement between the state's telecommunications companies. Two key objectives are to provide affordable high-speed Internet access to all North Carolinians within three years and local dial-up access to every telephone exchange within one year.

Membership

The Authority will consist of 21 members, six each to be appointed by the Governor, the President Pro Tem of the Senate and the Speaker of the House, and three ex officio members, including the state's Chief Information Officer, Chair of the North Carolina Rural Economic Development Center and the Secretary of Commerce.

Duties

The primary duties and responsibilities are to develop broad-based goals and statewide strategies and to plan, manage and oversee the work efforts for implementing projects for providing high-speed Internet access in the state's rural areas at rates comparable to those in its urban centers. This work includes:

- The development of overall strategies and master plans for achieving goals and objectives.
- The review, evaluation and selection of proposals from communications companies and Internet service providers for offering affordable Internet connectivity.
- The monitoring and quality assurance of all projects and efforts to ensure successful completion – on time, within budget, and delivery of the desired capabilities.
- The coordination of projects and work tasks to ensure goals and objectives are met in all rural areas and in the most cost-effective manner, especially the identification of best practices and common models that can be shared among projects and areas.
- The preparation and submission of progress, financial and other performance reports to provide accountability for expenditures and results.

Administrative

- The Authority will report administratively to the Department of Commerce and will be provided administrative and professional staff support from the Rural Economic Development Center.
- Administrative funding for the Authority will come through the Rural Redevelopment Authority, and its use will be subject to the reporting requirements outlined in that legislation.
- The Authority will sunset in three years.

VISITOR REGISTRATION SHEET

Ways + Means — Name of Committee

6-21-2000 — Date

1:00 pm meeting

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Fullen	Attorney
[illegible]	Capitol Group
Kathy Sawyer	Commerce
Jeff Mann	NC Railroad Co
Glenn Lamm	U.T.U.
Richard Westbrook	UTU
Matt Osborne	AOC
Jim Caldwell	Mid-Carolina COG PO Box 1510 Fayetteville
John Phelps	NCLM
John Doyle	CCSP
[illegible]	Charlotte Observer
Leslie Boney	NCDOC
Tom Runkle	NCDOC / ITS / IRM
Billy Ray Hall	NC Rural Center
Joe W. Foster	GTE
Gary Walker	Alltel
[illegible]	[illegible]
Pat Harris	Smith, Helms, Mulliss + Moore
Doug Misken	IBM
[illegible]	AGS
[illegible]	DHHS
[illegible]	BellSouth
Stephen Kelly	WorldCom
ROGER SHEATS	RURAL CENTER
Rick Webb	ITS
PERRI MORGAN	NFIB
[illegible]	[illegible]
Pam Wascott	Sprint

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	Kennedy Covington
Cindy Porter	Bode & Associates
[illegible]	CSX Corp
[illegible]	Capitol Group

House Committee
on
Ways and Means

Minutes
June 22, 2000
Room 1228

The House Committee on Ways and Means met at 11:00 a.m. on Thursday, June 22, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Buchanan, Cox, Decker, Eddins, Gibson, Haire, Jarrell, McCombs, Michaux, Morris, Pope, Warren, Weiss, and Wilson. Reps. Ramsey and Redwine had excused absences. Ex-Officio Member Rep. Cunningham was also in attendance. Rep. Nesbitt, Chairman, presided.

Rep. Nesbitt called the meeting to order and announced that **SB 927 (Blind Services Technical Changes)**, introduced by Senator Kinnaird was before the Committee. A new committee substitute was distributed by staff and Rep. Haire moved that it be adopted. *(See Attachment I)*

Committee Staff Jeff Hudson explained that the bill is a recommendation of the Division of Services for the Blind and makes numerous technical, stylistic, and conforming changes to statutes in Chapter 111 (Aid to the Blind) and other statutes related to the blind and visually impaired. It also makes a number of substantive changes to these statutes. *(See Attachment II, Bill Analysis).*

Rep. Michaux moved to give the committee substitute a favorable report, the original bill an unfavorable report. The motion passed.

A Senate Committee Substitute HB 541 (PWC Amendments) was before the Committee for concurrence. *(See Attachment III)* Rep. Gene Rogers was recognized to explain the bill. He said that it was originally introduced by Rep. Michell, would have required persons setting trotlines, buoy sets, and set hooks to obtain a special device license from the Wildlife Resources Commission. However, the committee substitute for **HB 541** amends provisions in the Boating Safety Act governing the operation of personal watercraft to make it less restrictive.

After discussion, Rep. Haire moved that the Committee concur and his motion passed.

The meeting was adjourned at 11:45 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 927
Second Edition Engrossed 4/22/99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S927-CSSB-010
18:07:10 EZT / 19-JUN-00

ATTENTION: Line numbers may change after adoption.

Short Title: Services to the Blind Amendments. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES GOVERNING SERVICES FOR THE BLIND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 111-4 reads as rewritten:

"**§ 111-4. Register of State's blind.**

(a) ~~It shall be the duty of the~~ The Department of Health and Human Services ~~to~~ shall cause to be maintained a complete register of the blind in the State ~~of North Carolina, which~~ that shall describe the ~~condition,~~ condition and cause of ~~blindness, capacity for education and industrial training~~ blindness of ~~each, with such~~ each and any other facts ~~as~~ that may seem to the Department of Health and Human Services to be of value.

(b) When, upon examination by a physician or optometrist, any person is found to be blind, the examiner shall report the results of the examination to the Department of Health and Human Services within 30 days after the examination is conducted."

Section 2. G.S. 111-5 is repealed.

Section 3. G.S. 111-6 reads as rewritten:

"§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.

The Department of Health and Human Services may establish one or more training schools and workshops for employment of suitable blind and visually impaired ~~persons~~ persons, ~~and shall be empowered to~~ equip and maintain ~~the same,~~ these schools and workshops, ~~to~~ pay ~~to~~ employees suitable wages, ~~and to~~ devise means for the sale and distribution of the products ~~thereof,~~ of these schools and workshops, and ~~may~~ cooperate with shops already established. The Department of Health and Human Services may also pay for lodging, tuition, support and all necessary expenses for blind and visually impaired persons during their training or ~~instructions~~ instruction in any suitable occupation, whether it be in industrial, commercial, ~~or professional~~ professional, or any other establishments, schools or institutions, or through private instruction ~~wherever~~ when in the judgment of the Department ~~such~~ of Health and Human Services this instruction or training can be ~~obtained, when in its judgment~~ obtained and ~~the training or instruction in question~~ will contribute to the efficiency or self-support of ~~such~~ the blind and visually impaired persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the ~~Department,~~ Department of Health and Human Services, outside of the State. The Department of Health and Human Services may ~~also, whenever it thinks proper,~~ also aid individual blind and visually impaired persons or groups of blind and visually impaired persons to become self-supporting by furnishing material or equipment to ~~them, and may also assist~~ them and by assisting them in the sale and distribution of their products. Any portion of the funds appropriated to the Department of Health and Human Services under the provisions of this Chapter providing for the rehabilitation of the blind and visually impaired and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 ~~to 111-26, and whenever~~ through G.S. 111-26. Whenever possible such funds may be matched by funds provided by the federal Social Security ~~Act.~~ Act, 42 U.S.C. § 301, et seq., as amended."

Section 4. G.S. 111-6.1 reads as rewritten:

"§ 111-6.1. Rehabilitation center for the ~~adult blind.~~ blind and visually impaired.

~~In addition to other powers and duties granted it by law, the~~ The Department of Health and Human Services ~~is hereby authorized~~

~~and directed to~~ shall establish and operate a rehabilitation center for the blind and visually impaired for the purpose of ~~assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.~~ evaluating and providing instruction in specialized independent living, prevocational, and vocational skills to blind and visually impaired persons to prepare them for obtaining and maintaining employment.

The Commission shall make all rules ~~and regulations~~ necessary for this purpose and the Department ~~is hereby authorized to~~ of Health and Human Services may enter into any agreement or contract; to purchase or lease property, both real and personal, to accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of ~~such a~~ this rehabilitation center.

The Department of Health and Human Services ~~is hereby authorized to~~ may receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for ~~the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190). Visually handicapped~~ blind and visually impaired persons under the provisions of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended. Blind and visually impaired persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the ~~Barden-Rehabilitation Act.~~ Rehabilitation Act of 1973, as amended."

Section 5. G.S. 111-7 reads as rewritten:

"§ 111-7. ~~Promotion visits.~~ In-home services.

The Department of Health and Human Services may ~~ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Health and Human Services may deem advisable.~~ foster maximum independence of blind and visually impaired persons through the provision of in-home independent living, development of community-based support groups, and related services as it deems advisable."

Section 6. G.S. 111-8 reads as rewritten:

"§ 111-8. Investigations; eye examination and treatment.

~~It shall be the duty of this [the]~~ The Department of Health and Human Services ~~to~~ shall continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are ~~preventable~~ preventable, and to inaugurate and cooperate in any ~~such~~ measure for the State ~~of North Carolina as may seem wise.~~ it deems advisable. The Department of Health and Human Services may arrange for the examination of the eyes of ~~the individual~~ blind and ~~partially blind~~ visually impaired persons and may secure and pay for medical and surgical treatment for ~~such~~ these persons whenever in the judgment of a qualified ophthalmologist or optometrist the eyes of ~~such~~ this person may be benefited ~~thereby.~~ by the treatment."

Section 7. G.S. 111-8.1 is repealed.

Section 8. G.S. 111-11 reads as rewritten:

"§ 111-11. ~~Definition of visually handicapped person.~~ Definitions.

For ~~purpose of this Chapter, visually handicapped persons are those persons who are totally blind or~~ the purposes of this Chapter, the following definitions apply:

(1) 'Blind person' means a person who meets any of the following criteria:
   a. Is totally blind.
   b. Has central visual acuity that does not exceed 20/200 in the better eye with correcting lenses.
   c. Has a visual field that subtends an angle no greater than 20 degrees at its widest diameter.

(2) 'Visually impaired person' means a person whose vision with glasses is so ~~defective~~ limited as to prevent the performance of ordinary activity for which eyesight is essential."

Section 9. Chapter 11 of the General Statutes is amended by adding a new section to read:

"§ 111-11.1 Jurisdiction of certain Divisions within the Department of Health and Human Services.

For the purpose of providing rehabilitative services to people who are visually impaired, the Division of Services for the Blind and the Division of Vocational Rehabilitation Services shall develop and enter into an agreement specifying which agency can most appropriately meet the specific needs of this client population. If the Divisions can not reach an agreement, the Secretary of Health and Human Services shall determine which

Division can most appropriately meet the specific needs of this client population."

Section 10. G.S. 111-12.6 reads as rewritten:

"**§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.**

All funds required under this Article to be deposited with or which have been ~~heretofore~~ transferred to the State Treasurer by the Bureau of Employment of the Department of Health and Human Services, and all future net earnings and accumulations of ~~said~~ the Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund ~~herein provided for,~~ provided for in G.S. 111-12.5, from whatever source ~~or sources~~ shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from the corpus shall inure to the sole benefit of the Department of Health and Human Services. The income and corpus shall be expended for services to and for the benefit of ~~visually handicapped~~ blind and visually impaired persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget."

Section 11. The catchline to Article 2 of Chapter 111 of the General Statutes reads as rewritten:

"ARTICLE 2.

Aid to the ~~Needy~~ Blind."

Section 12. G.S. 111-14 reads as rewritten:

"**§ 111-14. Application for benefits under Article; investigation and award by county commissioners.**

Any person claiming ~~benefit~~ benefits under this ~~Article,~~ Article shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Health and Human ~~Services, which~~ Services. This application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State ~~of North Carolina and~~ who is actively engaged in the treatment of diseases of the human ~~eye,~~ eye or by an optometrist, whichever the individual may select, ~~to the effect~~ stating that the applicant is ~~blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.~~ blind. ~~Such~~ This application may be made on the behalf of any ~~such~~ blind person by the Department of Health and Human ~~Services,~~ Services or by any other person. The board of county commissioners shall

cause an investigation to be made by a qualified ~~person, or persons,~~ person designated as ~~their agents~~ its agent for this purpose and shall pass upon the ~~said~~ application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, ~~they~~ the board of county commissioners may take into consideration the facts set forth in the ~~said application,~~ application and any other facts that are deemed necessary, and may at any ~~time, within their discretion,~~ time require an additional examination of the applicant's eyes by an ophthalmologist designated by the Department of Health and Human Services. When satisfied with the merits of the application, the board of county commissioners shall allow the ~~same~~ application and grant to the applicant ~~such~~ any proper relief ~~as may be suitable and proper,~~ according to the rules ~~and standards~~ established by the Commission for the ~~Blind, not inconsistent with this Article and in accordance with the further provisions hereof.~~ Blind."

Section 13. G.S. 111-15(1) is repealed.

Section 14. G.S. 111-16 reads as rewritten:

"§ 111-16. Application for aid; notice of award; review.

Promptly after an application for aid is made to the board of county commissioners under this ~~Article~~ Article, the Department of Health and Human Services shall be notified ~~thereof~~ of the application by ~~mail,~~ mail by ~~said~~ the county ~~commissioners, and one~~ commissioners. One of the duplicate applications for aid made before the board of county commissioners shall be transmitted with ~~said~~ this notice.

As soon as any award has been made or any application declined by the board of county commissioners, ~~or any application declined,~~ prompt notice ~~thereof in writing~~ in writing of the award or the declined application shall be forwarded by mail to the Department of Health and Human Services and to the ~~applicant, in which shall be fully stated~~ applicant. This notice shall fully state the particulars of the award or the facts of denial. An applicant may appeal an award or denial pursuant to Article 3 of Chapter 150B of the General Statutes.

~~Within a reasonable time, in accordance with rules and regulations adopted by the Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the Department of Health and Human Services copies of~~

~~all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.~~

~~As soon as may be practicable after the receipt of the said notice of appeal, the Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission for the Blind, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the Department of Health and Human Services, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.~~

~~In all cases where an appeal shall have been taken by the applicant, the Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action; and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.~~

~~If, in the absence of any appeal by the applicant, the North Carolina Department of Health and Human Services shall make any determination increasing or decreasing the award allowing or disallowing the same, not inconsistent with the rules and regulations promulgated by the Commission for the Blind, the applicant or board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the Commission for the Blind. The procedure in such cases shall be as provided in the section on appeals to the Commission by the applicant.~~"

Section 15. G.S. 111-18.1(b) reads as rewritten:

"(b) In the event of the death of a recipient of a cash payment ~~service, as defined by regulation of the N. C. Commission for the Blind, which~~ service that was rendered as ~~a~~ part of a program of public assistance for the blind or visually ~~handicapped,~~

impaired, any check ~~or checks~~ issued for the payment of ~~such~~ that service made payable to ~~such~~ that recipient, but not endorsed prior to ~~his~~ the recipient's death, shall be returned to the issuing agency and made void. The issuing agency shall then issue a check payable to the provider of ~~such~~ the service for the sum remaining due for this service, not to exceed the amount of ~~said~~ the returned and voided ~~check or checks.~~ check."

Section 16. G.S. 111-27 reads as rewritten:

"§ 111-27. Department of Health and Human Services to promote employment of ~~needy~~ blind persons; vending stands on public property.

For the purpose of assisting blind persons to become self-supporting, the Department of Health and Human Services ~~is hereby authorized to~~ may carry on activities to promote the employment of ~~needy~~ blind persons, including the licensing and establishment of ~~such~~ blind persons as operators of vending stands in public buildings. The ~~said~~ Department of Health and Human Services may cooperate with the federal government in the furtherance of the ~~provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688)~~ Randolph-Sheppard Vending Stand Act, 20 U.S.C. § 107-107f, as amended, providing for the licensing of blind persons to operate vending stands in federal buildings, or any other ~~acts~~ act of Congress ~~which~~ that may be ~~hereafter~~ enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings ~~are hereby authorized and empowered to~~ may permit the operation of vending stands by ~~needy~~ blind persons on the premises of any State, county or municipal property under their respective ~~jurisdictions: Provided, that such~~ jurisdictions. These operators shall be first licensed by the Department of Health and Human ~~Services: Provided further, that~~ Services. Additionally, no vending stands may be operated unless, in the opinion of the commissions or officials having control and custody of ~~such~~ the property, ~~such~~ the vending stands may be properly and satisfactorily operated on ~~such~~ the premises without undue interference with the use and needs ~~thereof~~ of the premises or property for public purposes."

Section 17. G.S. 111-27.1 reads as rewritten:

"§ 111-27.1. Department of Health and Human Services authorized to conduct certain business operations.

For the purpose of assisting blind and visually impaired persons to become self-supporting the Department of Health and Human Services ~~is hereby authorized to~~ may carry on activities to

promote the rehabilitation and employment of the ~~blind,~~ blind and visually impaired, including employment in or the operation of various business enterprises suitable for the blind ~~to be employed in or to operate.~~ and visually impaired. The Executive Budget Act ~~shall apply~~ applies to the operation of ~~such~~ these enterprises as to all appropriations made by the State to aid in the organization and the establishment of ~~such~~ these businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind and visually impaired persons operating ~~such~~ these businesses, and other expenses ~~thereof,~~ of these businesses from funds derived from local subscriptions and from the day-by-day operations ~~shall not be~~ are not subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement ~~thereof applicable~~ that apply to State funds but shall be supervised by the Department of Health and Human Services. All of the business operations under this ~~law, however, shall be~~ law are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

~~After September 30, 1983,~~ Randolph-Sheppard vendors ~~will no longer be~~ are not State employees. Blind licensees operating vending facilities under contract with the ~~North Carolina~~ Department of Health and Human Services, Division of Services for the Blind, are independent contractors."

Section 18. G.S. 111-28 reads as rewritten:

"**§ 111-28. Department of Health and Human Services authorized to receive ~~federal, etc.,~~ grants for benefit of ~~needy blind;~~ blind and visually impaired; use of information concerning blind persons.**

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the ~~needy blind~~ blind, visually impaired, and those in danger of becoming ~~blind; and all such~~ blind. All of these grants ~~so made and received~~ shall be paid into the State ~~treasury~~ Treasury and credited to the account of the Department of Health and Human Services, to be used in carrying out the provisions of this law.

The Commission for the Blind ~~is hereby further authorized and empowered to make such~~ may adopt rules ~~and regulations~~ as may be required by the federal government or State or federal agency as a condition for receiving ~~such~~ these federal funds, not inconsistent with the laws of this State.

~~Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.~~

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may enter into reciprocal agreements with public welfare agencies in other states ~~relative to the provision of~~ regarding assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of ~~such~~ assistance and services and in the study of the problems involved.

The Department of Health and Human Services ~~is hereby authorized and empowered to~~ may establish and enforce reasonable rules ~~and regulations~~ governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It ~~shall be~~ is unlawful, except for purposes directly connected with the administration of aid to the ~~needy~~ blind and visually impaired and in accordance with the rules ~~and regulations~~ of the Department of Health and Human Services, for any person ~~or persons~~ to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the ~~needy blind,~~ blind and visually impaired, directly or indirectly derived from the records, papers, files, or communications of the Department of Health and Human ~~Services or~~ Services, the board of county ~~commissioners~~ commissioners, or the county social services department, or acquired in the course of the performance of official duties.

~~Notwithstanding the above, the~~ The Department of Health and Human Services ~~is authorized to~~ may release to the ~~North Carolina Department~~ Division of Motor Vehicles in the Department of Transportation and to the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the ~~Department~~ Division of Motor Vehicles and the Department of Revenue shall be treated by ~~those departments~~ them as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General ~~Statutes of this State.~~

Statutes. The Department of Health and Human Services may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped."

Section 19. G.S. 111-28.1 reads as rewritten:

"**§ 111-28.1. Department of Health and Human Services authorized to cooperate with federal government in rehabilitation of ~~blind.~~ blind and visually impaired.**

The Department of Health and Human Services ~~is hereby authorized and empowered to make~~ may adopt the necessary rules ~~and regulations~~ to cooperate with the federal government in the furtherance of the ~~provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190)~~ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 29 U.S.C. § 701, et seq., as amended, providing for the rehabilitation of the ~~blind.~~ blind and visually impaired."

Section 20. G.S. 111-41 reads as rewritten:

"**§ 111-41. Preference to ~~visually handicapped~~ blind persons in operation of vending facilities; responsibility of Department of Health and Human Services.**

In order to promote the employment and the self-sufficiency of ~~visually handicapped~~ blind persons in North Carolina, State agencies shall upon the request of the Department of Health and Human Services give preference to ~~visually handicapped~~ blind persons in the operation of vending facilities on State property. The Department of Health and Human Services shall encourage and assist the operation of vending facilities by ~~visually handicapped~~ blind persons."

Section 21. G.S. 111-42(e) is repealed.

Section 22. G.S. 111-43 reads as rewritten:

"**§ 111-43. Installation of coin-operated vending machines.**

In locations where the Department of Health and Human Services determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants,

the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department of Health and Human Services shall be used by the Department for the support of programs that enable blind and visually impaired people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind."

Section 23. G.S. 111-44 reads as rewritten:

"**§ 111-44. Location and services provided by State agency.**

If the Department of Health and Human Services ~~shall determine~~ determines that a location is suitable for the operation of a vending facility by a ~~visually handicapped~~ blind person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in the alteration and renovation of the present location. The State agency shall provide necessary utilities, janitorial ~~services~~ service, and garbage disposal for the operation of the vending facility. Space and services for the vending facilities ~~and service therefor~~ shall be provided without charge."

Section 24. G.S. 111-45 reads as rewritten:

"**§ 111-45. Duty of State agency to inform ~~Department.~~ the Department of Health and Human Services.**

It shall be the duty of the State agencies to inform the Department of Health and Human Services of existing and prospective locations for vending facilities and coin-operated vending machines and to ~~prescribe regulations (upon~~ adopt rules, upon request of the ~~Department)~~ Department, to promote the successful operation of the vending facilities of the ~~visually handicapped.~~ blind."

Section 25. G.S. 111-46 reads as rewritten:

"**§ 111-46. Vending facilities operated by those other than ~~visually handicapped~~ blind persons.**

Where vending facilities on State property are operated by those other than ~~the visually handicapped~~ blind persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Health and Human Services is notified ~~thereof~~ of the proposed renewal or extension and ~~he~~ the Secretary determines within 30 days of ~~such~~ this notification that the vending facilities are not, or cannot become, suited for operation by the ~~visually handicapped.~~ blind. ~~However, if~~ If the

Secretary of the Department of Health and Human Services within 30 days of the date of ~~such~~ this notification fails to provide for the operation of the vending facilities by the ~~visually handicapped,~~ blind, the existing contract may be renewed or extended."

Section 26. G.S. 111-49(b) reads as rewritten:

"(b) 'Blind vendor' means a blind ~~person, as specified in G.S. 105-249(b),~~ person who has been licensed by the Division of Services for the Blind to operate a vending stand in a public building."

Section 27. G.S. 111-50 reads as rewritten:

§ 111-50. Operations of highway vending.

(a) In locations on North Carolina highways where the Department of Health and Human Services determines that automatic vending is suitable, the Department shall authorize the Division of Services for the Blind to contract with blind vendors in the operation of highway vending facilities. The contracts shall be reviewed and renegotiated by the Division every two years and shall be reviewed by the Transfer and Promotion Committee. The Commission for the Blind shall adopt rules necessary to govern the operations. The highway vending program shall be a part of the Business Enterprises Program operated under the Randolph-Sheppard Act, 20 U.S.C. § 107a.

~~(b) Profits returned to the Division shall be based upon operator net income and determined as follows:~~

~~(1) The Division shall charge seventeen percent (17%) set-aside on operator net income up to two and one-half times the average operator income for the previous State fiscal year.~~

~~(2) The Division shall charge fifty percent (50%) set-aside on operator net income between two and one-half and three and one-half times the average operator income for the previous State fiscal year.~~

~~(3) The Division shall charge sixty-five percent (65%) set-aside on all operator net income over three and one-half times the average operator income for the previous State fiscal year.~~

(c) The Commission for the Blind may adopt rules to establish applicable set-aside rates for the Business Enterprises Program. The Commission shall only develop rules authorized by this subsection with the active participation of the Elected Committee of Vendors."

Section 28. G.S. 135.16.1 reads as rewritten:

"§ 135-16.1. Blind or visually ~~handicapped~~ impaired employees.

(a) On July 1, 1971, all blind or visually ~~handicapped~~ impaired employees employed by the Department of Health and Human Services shall be enrolled as members of the Teachers' and State Employees' Retirement System. All such employees shall be given full credit for all service theretofore as employees of the Department of Health and Human Services. All retired employees drawing or receiving benefits from and under the private retirement plan purportedly created on December 6, 1966, by the Bureau of Employment for the Blind Division pursuant to a trust agreement purportedly entered into with a private banking institution as trustee shall continue to be paid by the Teachers' and State Employees' Retirement System benefits in the same amount which they purportedly were entitled to under the private retirement plan and trust agreement, except that such retired persons shall be eligible for such annual cost-of-living increases as may be provided for retirement members of the Teachers' and State Employees' Retirement System under the provisions of this Article.

(b) Upon the enrollment of the employees in the Teachers' and State Employees' Retirement System, the purported private retirement plan and trust agreement hereinabove referred to shall be dissolved and terminated.

(c) Notwithstanding the foregoing, blind persons licensed by the State and operating vending facilities under contract with the Department of Health and Human Services, Division of Services for the Blind and its successors, hereinafter referred to as licensed vendors, so licensed on and after October 1, 1983, shall not be members of the Retirement System. All licensed vendors in service or who are members of the Retirement System before October 1, 1983, shall make an irrevocable election to do one of the following:

(1) Continue contributing membership service as if an employee under the same conditions and requirements as are otherwise provided, and have the rights of a member to all benefits and a retirement allowance;

(2) Receive a return of accumulated contributions with cessation of contributing membership service, under G.S. 135-5(f), and in any event with regular interest regardless of membership service; or

(3) Terminate contributing membership service and be entitled alternatively to the benefits and allowances provided under G.S. 135-3(8) or 135-5(a)."

Section 29. G.S. 143B-157(3b) reads as rewritten:

"(3b) The Commission shall advise the Department regarding preparation of applications, the State Plan, ~~the strategic plan,~~ amendments to ~~these plans,~~ this plan, the State needs assessments, and the evaluations required by the federal rehabilitation program; and in partnership with the Department develop, agree to, and review State goals and priorities;"

Section 30. G.S. 143B-157(3e) reads as rewritten:

"(3e) The Commission shall coordinate with other councils within the State, including the statewide Independent Living Council established under section 705 of the federal Rehabilitation Act, ~~294~~ 29 U.S.C. § 720, et seq., the advisory panel established under section ~~613(a)(12)~~ 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1413(A)(12), the ~~State Planning~~ Council on Developmental Disabilities described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6024, ~~and~~ the State Mental Health Planning Council established pursuant to section 1916(e) of the Public Health Service Act, 42 U.S.C. § ~~300x-4(e);~~ 300x-4(e), and the Commission on Workforce Development;"

Section 31. G.S. 143B-158 reads as rewritten:

"**§ 143B-158. Commission for the ~~Blind -- members; selection; quorum; compensation.~~ Blind.**

(a) The Commission for the Blind of the Department of Health and Human Services shall consist of ~~11~~ 13 members ~~appointed by the Governor.~~ as follows:

(1) One representative of the Statewide Independent Living Council.

(2) One representative of a parent training and information center established pursuant to section 631(c) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431(c).

(3) One representative of the State's Client Assistance Program.

(4) One vocational rehabilitation counselor who has knowledge of and experience in vocational rehabilitation services for the blind. A vocational rehabilitation counselor appointed

pursuant to this subdivision shall serve as a nonvoting member of the Commission if the counselor is an employee of the Department of Health and Human Services.

(5) One representative of community rehabilitation program services providers.

(6) One current or former applicant for, or recipient of, vocational rehabilitation services.

(7) One representative of a disability advocacy group representing individuals who are blind.

(8) One parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and either has difficulty representing himself or herself or who is unable, due to disabilities, to represent himself or herself.

(9) One representative of business, industry, and labor.

(10) One representative of the directors of projects carried out under section 121 of the Rehabilitation Act of 1973, 29 U.S.C. § 741, as amended, if there are any of these projects in the State.

(11) One representative of the Department of Public Instruction.

(12) One representative of the Commission on Workforce Development.

(13) The Director of the Division of Services for the Blind shall serve as an ex officio, nonvoting member.

~~No physician, no optometrist, no optician, no oculist, nor any other person who receives services or funds regulated by the Commission shall be qualified to serve on the Commission for the Blind. Any person who is presently a member of the Commission and is disqualified by reason of the preceding sentence shall be deemed to have resigned his position on the Commission. The Governor shall appoint a successor for the balance of the unexpired term. At all times at least six members of the Commission shall be persons who are visually handicapped to the minimum extent of being legally blind. The members of the Commission shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.~~

(b) The members of the Commission for the Blind shall be appointed by the Governor. The Governor shall appoint members after soliciting recommendations from representatives of organizations representing a broad range of individuals who have disabilities and organizations interested in those individuals. In making appointments to the Commission, the Governor shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Commission.

(c) A majority of Commission members shall be persons who are blind, as defined in G.S. 111-11. A majority of Commission members shall be persons who are not employed by the Division of Services for the Blind.

(d) The Commission for the Blind shall select a Chairperson from among its members.

(e) The term of office of members of the Commission is three years. The term of members appointed under subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall expire on June 30 of years evenly divisible by three. The term of members appointed under subdivisions (5), (6), (7), and (8) of subsection (a) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (9), (10), (11), and (12) of subsection (a) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three.

(f) No individual may be appointed to more than two consecutive three-year terms. Upon the expiration of a term, a member shall continue to serve until a successor is appointed, as provided by G.S. 128-7. An appointment to fill a vacancy shall be for the unexpired balance of the term.

(g) A member of the Commission shall not vote on any issue before the Commission that would have a significant and predictable effect on the member's financial interest. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(h) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(i) A majority of the Commission shall constitute a quorum for the transaction of business.

(j) All clerical and other services required by the Commission shall be supplied by the Secretary of Health and Human Services."

Section 32. G.S. 143B-163 reads as rewritten:

"§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind -- creation, powers and duties.

(a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Health and Human Services. This Committee shall make a continuing study of the entire range of problems and needs of the blind and visually impaired population of this State and make specific recommendations to the Secretary of Health and Human Services as to how these may be solved or alleviated through legislative action. The Committee shall examine national trends and programs of other states, as well as programs and priorities in North Carolina. Because of the cost of treating persons who lose their vision, the Committee's role shall also include studying and making recommendations to the Secretary of Health and Human Services concerning methods of preventing blindness and restoring vision.

(b) The Consumer and Advocacy Advisory Committee for the Blind shall advise all State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities, including the secretary, director and members of said boards, commissions, agencies, divisions, departments, schools, et cetera, on the needs of the citizens of the State of North Carolina who are now or will become visually ~~handicapped or~~ impaired.

(c) The Consumer and Advocacy Advisory Committee for the Blind shall also advise every State board, commission, agency, division, department, school, corporation, or other State-administered associations or entity concerning sight conservation programs that it supervises, administers or controls.

(d) All State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities including the secretary, director and members of said State boards, agencies, departments, et cetera, which supervise, administer or control any program for or affecting the citizens of the State of North Carolina who are now or will become visually ~~handicapped or~~ impaired shall inform the Consumer and Advocacy Advisory Committee for the Blind of any proposed change in policy, program, budget, rule, or regulation which will affect the citizens of North Carolina who are now or will become visually ~~handicapped or~~ impaired. Said board, commission, et cetera, shall allow the Consumer and Advocacy Advisory Committee for the Blind, prior to passage, unless such

change is made pursuant to G.S. 150B-21.1, an opportunity to object to the change and present information and proposals on behalf of the citizens of North Carolina who are now or will become visually ~~handicapped or~~ impaired. This subsection shall also apply to all sight conservation programs of the State of North Carolina.

(e) Nothing in this statute shall prohibit a board, commission, agency, division, department, et cetera, from implementing any change after allowing the Consumer and Advocacy Advisory Committee for the Blind an opportunity to object and propose alternatives. Shifts in budget items within a program or administrative changes in a program required in the day-to-day operation of an agency, department, or school, et cetera, shall be allowed without prior consultation with said Committee."

Section 33. G.S. 168-1 reads as rewritten:

"**§ 168-1. Purpose and definition.**

The State shall encourage and enable handicapped persons to participate fully in the social and economic life of the State and to engage in remunerative employment. The definition of "handicapped persons" shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of 'visually ~~handicapped'~~ impaired' in G.S. 111-11 shall apply."

Section 34. G.S. 168-5 reads as rewritten:

"**§ 168-5. Traffic and other rights of persons using certain canes.**

The driver of a vehicle approaching a visually ~~handicapped~~ impaired pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian."

Section 35. The Commission for the Blind shall not exercise the authority granted under G.S. 111-50(c), as enacted by Section 27 of this act, until after such time as the Rehabilitation Services Administration of the United States Department of Education has designated the Commission as part of the State Licensing Agency for the Business Enterprises Program. Until such time as the Commission for the Blind adopts permanent rules to establish set-aside rates for the Business Enterprise Program pursuant to G.S. 111-50(c), as enacted by Section 27 of this Act, profits returned to the Division of Services for the Blind shall be based upon operator net income and determined as follows:

(1) The Division shall charge seventeen percent (17%) set-aside on operator net income up to two and one-half times the average operator income for the previous State fiscal year.
(2) The Division shall charge fifty percent (50%) set-aside on operator net income over two and one-half times the average operator income for the previous State fiscal year.

Section 36. In order to establish a schedule of staggered terms of three years for the Commission for the Blind and to provide for an orderly transition in membership of the Commission as specified in G.S. 143B-158, as amended by Section 31 of this act, the following provisions apply:

(1) Mary L. O'Daniel shall serve in the position established by G.S. 143B-158(a)(1) through June 30, 2001.
(2) J. Oattley Lee shall serve through June 30, 2001. The individual next appointed shall fill the position established by G.S. 143B-158(a)(2) for a term that shall expire on June 30, 2004.
(3) Paul H. Starling shall serve through June 30, 2004. The individual next appointed shall fill the position established by G.S. 143B-158(a)(3) for a term that shall expire on June 30, 2007.
(4) John T. Miller III shall serve through June 30, 2001. The individual next appointed shall fill the position established by G.S. 143B-158(a)(4) for a term that shall expire on June 30, 2004.
(5) S. Annette Clinard shall serve in the position established by G.S. 143B-158(a)(5) through June 30, 2002.
(6) Allen G. Moore shall serve in the position established by G.S. 143B-158(a)(6) through June 30, 2002.
(7) Catherleen Thomas shall serve in the position established by G.S. 143B-158(a)(7) through June 30, 2002.
(8) Norma F. Krajczar shall serve through June 30, 2004. Notwithstanding G.S. 143B-158(e), the individual next appointed shall fill the position established by G.S. 143B-158(a)(8) for a term of four years that shall expire on June 30, 2008.
(9) George Murphy shall serve in the position established by G.S. 143B-158(a)(9) through June 30,

2001. Notwithstanding G.S. 143B-158(e), the term of the individual next appointed to fill this position shall be for two years and shall expire on June 30, 2003.

(10) Ronald L. Huber shall serve through June 30, 2003. The individual next appointed shall fill the position established by G.S. 143B-158(a)(10) for a term that shall expire on June 30, 2006.

(11) The term of the member of the Commission initially appointed to fill the position established by G.S. 143B-158(a)(11) shall expire on June 30, 2003.

(12) The term of the member of the Commission initially appointed to fill the position established by G.S. 143B-158(a)(12) shall expire on June 30, 2003.

Section 37. This act is effective when it becomes law.

SENATE BILL 927:
Services to the Blind Amendments

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Senator Kinnaird
Date:	June 20, 2000	**Summary by:**	Jeff Hudson, Committee Counsel
Version:	Proposed House Committee Substitute (S927-CSSB-010) for Second Edition		

SUMMARY: ***Senate Bill 927 is a recommendation of the Division of Services for the Blind. The Bill makes numerous technical, stylistic, and conforming changes to statutes in Chapter 111 (Aid to the Blind) and other statutes related to the blind and visually impaired. Senate Bill 927 also makes a number of substantive changes to these statutes. These changes are summarized as follows:***

Article 1 of Chapter 111 (General Duties of the Department of Health and Human Services)

Section 1 amends G.S. 111-4 (Register of State's blind) to add a provision similar to that currently found in G.S. 111-8.1 (repealed by Section 7 of this act) that requires a physician or optometrist to report to the Department of Health and Human Services (DHHS) the results of an examination of a person who is found to be blind. The reporting requirement added by Section 1 is specific to physicians and optometrists and only relates to a person found to be blind, not to those who are found to have vision with glasses that is so defective as to prevent the performance of ordinary activities for which eyesight is essential (the visually impaired). Section 1 also makes technical and stylistic changes.

Section 2 repeals G.S. 111-5, which directs DHHS to maintain bureaus of information and industrial aid designed to aid the blind in finding employment and teach them occupations that may be conducted from their homes.

Sections 3, 4, and 5 amend the statutes governing training schools and workshops, the rehabilitation center for the blind, and in-home services so that these programs include the visually impaired as well as the blind. These sections also make technical and stylistic changes.

Section 6 makes technical and stylistic changes to G.S. 111-8 (Eye examination and treatment).

Section 7 repeals G.S. 111-8.1 (Certain eye examinations to be reported to DHHS). A provision similar to that found in G.S. 111-8.1 is added to G.S. 111-4 by Section 1 of this act.

Section 8 amends G.S. 111-11 (Definitions) to replace the definition of "visually handicapped persons" with definitions for "blind person" and "visually impaired person". The new definitions for blind and visually impaired persons include all individuals covered by the existing definition of visually handicapped persons. The new definition of blind person is consistent with the federal definition.

Section 9 adds a new statute to Chapter 111 of the General Statutes. G.S. 111-11.1 requires the Division of Services for the Blind and the Division of Vocational Rehabilitative Services to specify which agency can most appropriately meet the needs of the visually impaired.

Section 10 makes technical and stylistic changes to G.S. 111-12.6 (Disposition of funds).

Article 2 of Chapter 111 (Aid to the Blind)

Section 11 deletes the word "Needy" from the catchline of Article 2 of Chapter 111.

Section 12 amends G.S. 111-14 (Application for benefits) to clarify that this statute applies only to the application for benefits for the blind. Section 11 also makes technical and stylistic changes.

Section 13 amends G.S. 111-15 (Eligibility for relief) to narrow eligibility for relief under the Article governing aid to the blind to include just the blind and not those whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential (visually impaired).

Section 14 amends G.S. 111-16 (Review of decision on aid) to provide that review of an award or denial of aid will be had in an administrative hearing pursuant to Article 3 of Chapter 150B rather than in a hearing before the Commission for the Blind (Commission). Section 13 also makes technical and stylistic changes.

Sections 15 and 16 make technical and stylistic changes to G.S. 111-18.1(b) (Checks payable to decedents) and G.S. 111-27 (Vending on public property), respectively.

Sections 17, 18, and 19 amend the statutes governing the authority of DHHS to operate business enterprises suitable for the blind, to receive grants for the benefit of the blind, and to cooperate with the federal government in the rehabilitation of the blind so that these programs include the visually impaired as well as the blind. These sections also make technical and stylistic changes.

Article 3 of Chapter 111 (Operation of Vending Facilities on State Property)

Section 20 amends G.S. 111-41 (Preference to visually handicapped persons in operation of vending facilities) to limit the preference to just the blind and not to the visually handicapped.

Section 21 repeals the definition of "visually handicapped" in G.S. 111-42. The definitions of "blind" and "visually impaired" established by Section 8 of this act will now apply.

Section 22 amends G.S. 111-43 (Coin-operated vending machines) to include the visually impaired as beneficiaries of programs funded by the profits from coin-operated vending machines. Section 21 also makes technical and stylistic changes.

Sections 23, 24, and 25 amend the statutes governing the operation of vending facilities on State property so that this program applies only to the blind and does not include the visually handicapped or impaired. These sections also make technical and stylistic changes.

Article 4 of Chapter 111 (Operation of Highway Vending Facilities on NC Highways)

Section 26 makes a technical change to the definition of "blind vendor" in G.S. 111-49.

Section 27 deletes the statutorily established set-aside rates in G.S. 111-50 and authorizes the Commission to establish the applicable set-aside rates.

Other statutes related to the blind and visually impaired and miscellaneous provisions

Section 28 makes a conforming change to G.S. 135-16.1 (Retirement benefits for blind or visually handicapped employees of DHHS) by replacing "visually handicapped" with "visually impaired".

Section 29 amends G.S. 143B-157(3b) regarding the role of the Commission in advising DHHS.

Section 30 makes technical changes to GS. 143B-157(3e) regarding coordination between the Commission and other State councils.

Section 31 amends G.S. 143B-158 (Commission for the Blind) so that it more closely conforms to federal law. Section 30 increases the size of the Commission by 2 members, specifies the membership of the Commission, and reduces the terms of members of the Commission from 6-year to 3-year terms. Section 30 also makes technical and stylistic changes.

Sections 32, 33, and 34 make conforming changes to various statutes by replacing "visually handicapped" with "visually impaired".

Section 35 provides that the Commission shall not exercise its authority to establish set-aside rates, as provided in Section 26 of this act, until after it is designated a part of the State Licensing Agency for the Business Enterprise Program by the United States Rehabilitative Services Administration. Section 34 also provides for the applicable set aside rates until such time as the Commission establishes set-aside rates by permanent rule.

Section 36 provides for continuity of membership between the current Commission (11 members with 6-year terms) and the expanded Commission (13 members with 3-year terms).

Section 37 makes this act effective when it becomes law.

Proposed Committee Substitute for Senate Bill 927, Second Edition

The Proposed Committee Substitute for Senate Bill 927 differs from Senate Bill 927, Second Edition, in its treatment of the definitions of blind and visually impaired, the establishment of set-aside rates, and the amendments to the Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 541
Committee Substitute Favorable 6/9/99
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/13/00

Short Title: PWC Amendments. (Public)

Sponsors:

Referred to:

March 23, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES REGULATING THE OPERATION OF PERSONAL WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 is amended by adding a new subsection to read:

"(a1) No person shall operate a personal watercraft on the waters of this State at greater than no-wake speed within 100 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel, unless the personal watercraft is operating in a narrow channel. No person shall operate a personal watercraft in a narrow channel at greater than no-wake speed within 50 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel."

Section 2. G.S. 75A-13.3(e) reads as rewritten:

"(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel within 100 feet of such other vessel or when visibility around such other vessel is obstructed;

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision; and

~~(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and~~

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

Section 3. G.S. 75A-13.3 is amended by adding a new subsection to read:

"(f1) For purposes of this section, "narrow channel" means a segment of the waters of the State 300 feet or less in width."

Section 4. G.S. 75A-13.3(h) reads as rewritten:

"(h) Nothing in this section prohibits units of local government, marine commissions, or local ~~wake~~ lake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local ~~wake~~ lake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations."

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

HOUSE BILL 541:
PWC Amendments

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Representative Mitchell
Date:	June 21, 2000	**Summary by:**	Jeff Hudson,
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 541, as originally introduced by Representative Mitchell, would have required persons setting trotlines, buoy sets, and set hooks to obtain a special device license from the Wildlife Resources Commission. House Bill 541, Third Edition, amends provisions in the Boating Safety Act governing the operation of personal watercraft.***

CURRENT LAW: G.S. 75A-13.3 governs the operation of personal watercraft (pwc) on the waters of the State. Under the current provisions of G.S. 75A-13.3(e)(4), the operation of a pwc within 100 feet of the shoreline, a dock, swimmer, angler, or anchored vessel at greater than no-wake speed is deemed careless and reckless operation of the pwc and is punishable as a Class 2 misdemeanor.

BILL SUMMARY: House Bill 541, Third Edition, makes the following changes to G.S. 75A-13.3:

- Repeals G.S. 75A-13.3(e)(4).
- Adds a new subdivision (a)(1) to G.S. 75A-13.3 that makes it unlawful to operate a personal watercraft at greater than no-wake speed within 100 feet of an anchored vessel, dock, swimming area, swimmer, fisherman, or manually propelled vessel unless the pwc is operating in a narrow channel. When a pwc is operated in a narrow channel, the no-wake zone is reduced to 50 feet. Narrow channel is defined to be a segment of the waters of the State 300 feet or less in width. Neither the 100-foot or 50-foot no-wake zone includes shoreline for purposes of determining the boundaries of the no-wake zone.
- Violation of subdivision (a)(1) is a Class 3 misdemeanor.
- Corrects G.S. 75A-13.3(h) by changing "local *wake* authorities" to "local *lake* authorities."

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

Note: Barbara Riley, Committee Counsel to the Senate Committee on Agriculture, Environment, and Natural Resources, contributed to the preparation of this summary.

HOUSE COMMITTEE ON WAYS AND MEANS

Agenda
June 22, 2000
11:00 a.m.

Meeting called to order and
Opening remarks by Rep. Martin Nesbitt, Chair

Bills to be considered:

SB 927	Blind Services technical Changes (Kinnaird)
HB 541	*Senate Committee Substitute* for PWC Amendments (Rep. Rogers will explain the bill)

ADJOURNMENT

VISITOR REGISTRATION SHEET

WAYS & MEANS — Name of Committee

6/22 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Hamilton	Wildlife Com.
Joan Troy	" "
Mark Deaton	Capitol Group
John Phelps	NCLM

House Committee
on
Ways and Means

Minutes
June 27, 2000
Room 1228

The House Committee on Ways and Means met at 12:00 noon on Tuesday, June 27, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Members present included Reps. Allen, Blue, Bowie, Buchanan, Cox, Decker, Eddins, Fox, Gibson, Haire, Jarrell, McCombs, Michaux, Morris, Owens, Pope, Thomas, Warren, Weiss, and Wilson. Reps. Ramsey and Redwine had excused absences. Rep. Nesbitt, Chairman, presided. Ex-Officio members Reps. Cunningham and Earle were also in attendance.

Rep. Nesbitt called the meeting to order and recognized House Pages, Jamie Alligood and Perry Alcott, after which Rep. Haire was recognized to give the Committee a subcommittee report. He distributed a new committee substitute for **SB 1343 (Rural Internet Access Authority)**, sponsored by Senator Reeves. *(See Attachment I)* Rep. Michaux moved that the committee substitute be adopted and his motion passed.

Committee Staff Kory Goldsmith explained that the committee substitute creates the North Carolina Rural Internet Access Authority (RIAA). The purpose of the RIAA is to advise and make recommendations to the Governor, the general Assembly, and the North Carolina Rural Redevelopment Authority regarding efforts to provide rural counties with high-speed broadband Internet access. The Authority dissolves on December 31, 2003. *(See Attachment II, Bill Analysis).*

Rep. Tolson, who sponsored the companion House bill (H1611), told the Committee that he supported the new committee substitute.

Rep. Haire moved to amend the bill. (*See Attachment III*) The amendment was changed to included all seven Regional Economic Development Commissions whereupon the Committee adopted the amendment.

Rep. Gibson expressed concerns about the kind of messages the General Assembly is sending to entities that receive state money. He spoke specifically of MCNC and proposed to amend this bill to address that situation. Rep. Blue moved to displace the amendment. The Chairman ruled that the amendment was not germane and was, therefore, out of order.

Rep. Haire moved to incorporate the adopted amendment and the committee substitute for SB 1343 into a new committee substitute, give that bill a favorable report, and the original bill an unfavorable report. His motion passed.

SB 1183 (NCRR Amendments), sponsored by Senator Dalton, was before the Committee. Rep. Church who sponsored the companion House Bill was recognized.

A proposed committee substitute was distributed to the Committee. *(See Attachment IV).* Rep. Michaux moved that it be adopted and the motion passed.

Senator Dalton was recognized. He said the bill comes as a recommendation of the Future of North Carolina Railroads Study Commission. It makes numerous changes to the laws relating to the North Carolina Railroad Company (N C RR) and the rights of railroads in general. It allows the N C RR to dispose of or encumber property upon the approval of the Board of Directors. It grants the N C RR the right to condemn property in fee simple and use the "Quick Take" authority for this type of condemnation. It creates a presumption that any grant of property to a railroad company includes air and subsurface rights absent clear language to the contrary. It creates a new civil action for Summary Removal of Encroachments and creates a new criminal trespass statute for trespass on a railroad right-of-way.

He said the NC Railroad was a unique asset for the State to own and he felt that the bill was just defining what he believed to be existing law. He further explained the changes to the law that the bill would provide for.

Rep. Church was recognized. He said the NC RR consisted of 310 miles of track from Morehead City to Charlotte, NC. R replacement of this corridor would cost the State approximately $412 million. The value of the NC RR stock when purchased in 1998 was $282 million. Liquidation and scrap from these rails would be $42 million. He said this was a big entity.

Committee Staff Kory Goldsmith was recognized to give her analysis of the bill. (*See Attachment V, Bill Analysis).* She began with Section 1. The way language is structured, it would allow NC RR to restructure how it is corporately created. At this time they have chosen to be a Real Estate Investment Trust for the purposes of federal tax provisions. They are a corporation whose voting shares are fully owned by the State of North Carolina and are taxed as a public company. One of the consequences of that is that 5% of its income must be paid as dividends to the shareholders. Section 1 would allow the corporation, without the prior consent of the General Assembly, to change its corporate structure. If it did that now, there would be tax consequences.

The President of the NC RR, Sam Hunt, was recognized. He commented on the first provision. He said the NC RR would like to be a non-profit owned by the State so in that instance, there would be no tax, not even the 5%. After five years, he said, the NCRR would be eligible, under federal law, to convert to a non-profit. It wouldn't change the control by the state, but would eliminate the requirement that the NCRR pay dividends.

Rep. Decker had questions about conversion to non-profit, how would it benefit the citizens of North Carolina. Sam Hunt said by this effort they would try to maximize the income of the Railroad. Rep. Decker asked how much money the NC RR had paid the State. Scot Saylor, Attorney for the NC RR said the NCRR had paid the State $19 million in dividends this year. Mr. Hunt explained that $10 million of that is being used to improve the tracts, $6 million went to Charlotte, and $3 million went to Burlington.

Rep. Decker asked about lease agreements with other railroads, to which Mr. Hunt said, "the NC RR owns the right-of-ways from Morehead City to Charlotte. By and large, it is 200 feet wide. The agreement with Norfolk Southern is that they have an exclusive right to use most of the track. In the old days, they had a lease that leased the entire right-of-way. Therefore, they had control of the entire right-of-way. One reason for the trespassing part, he continued, "is that we have liabilities, safety concerns and things like that." He said SB 1183 is an attempt to bring the NC RR structure up-to-date. They have 150 year old charter and a lot of these powers are in there, some even more so, but he said they wanted the General Assembly to clarify what their powers are, so as they go forward, they will then know what the General Assembly wants them to do.

Rep. Pope asked if the NC RR, as a private, for profit corporation chartered by the State, was subject to the same corporate law that other North Carolina corporations are subject to.

Scot Saylor, Attorney from the NC RR, was recognized. He said that the NC RR Company was a Chapter 55 Corporation subject to the unique features of the Statutes that deal with their corporate governance.

Rep. Pope said that in a Chapter 55 corporation, the Board of Directors may propose and adopt plans for reorganization as set forth in the Statute by shareholder approval. Just because the NC RR no longer has private shareholders, shouldn't not mean they should not get shareholder approval from the State.

Senator Dalton said they were trying to give the Board of Directors more flexibility in case an opportunity presented itself and the General Assembly wasn't in Session.

Rep. Pope added that if the General Assembly is not in Session, surely the Governor and the Council of State could exercise that shareholder approval as they can in the existing statute.

Rep. Wilson said that her concern is that if the NC RR switches over to a non-profit because of tax consequences, at that time the NC RR may be worth several hundred million dollars. This is a very large asset owned by the State. Is there any other single entity in North Carolina, State-owned, that has been given this much autonomy?

Senator Dalton said he didn't know of any other assets like this in the State. Not many other states would have this type of asset. Staff knew of none.

Rep. Nesbitt wanted to clarify what the State would lose if this bill became law. One loss would be the dividend, which NC RR is now required, by law, to paid the State. Another loss is that the General Assembly would lose control of the NC RR.

Scot Saylor agreed that, after conversion to a non-profit, the Board would be in control of whether or not the money would come to the State.

Senator Dalton felt that the language in question was just clarifying something that wasn't that clear after all. Rep. Nesbitt said that was existing law, that was not underlined.

There was further discussion about the dividends paid to the State and how this payment would change if this bill is passed.

Sam Hunt thought the provision in question was a non-issue. He spoke at length about how NCRR needed the power granted in this bill to get on with improving the railroad and doing business.

Kory Goldsmith continued her explanation of the bill by explaining Section 3. Which repeals G.S. 124-2. She said this repeals an obsolete provision that deemed the State a shareholder in any railroad canal or other "internal improvement" to which an appropriation was made.

Research Attorney Giles Perry added that his understanding of this section is that when the State was in the business of appropriating money to capitalize canal operations or railroad, s the State wanted an interest in those initiatives. The only way to do that is to say that the State is a shareholder. Rep. Nesbitt asked staff to research this further.

Kory Goldsmith continued explaining Section 4 which modernizes the financial reporting requirements for the NCRR, and any other railroad, canal or internal improvement in which the State holds an interest. It also requires the report to be made annually to the Joint Legislative Commission on Governmental Operations, and eliminates a criminal penalty for failure to report as required.

Rep. Pope was concerned about eliminating certain reporting requirements as was done in Section 4 or the bill. He also asked what the Board of Directors was being paid at this time.

Sam Hunt responded that when buy out was done the Board of Directors of NCRR got $600 a meeting. That's the way it was up until the buy out. At that time the Board changed the per diem to be the same as the General Assembly. There are things that they are involved in where they have to sign confidentiality agreements when involved in negotiations. His salary is $15,000 per year as president and each Board member gets $200 per month. Staff of the NCRR is five permanent people and one temporary. They use the Board as staff. In addition, they adopted an open meetings and open records policy.

Staff continued explaining Section 5. G.S. 124-4. The bill repeals the requirement for the Governor to report on canals, railroads, and other internal improvements.

Section 6 Authorizes the NCRR to make property transactions, with the approval of the Board. All property transactions would have to be reported annually to the Joint Legislative Commission of Governmental Operations. Current law requires the Governor and the Council of State to Approve all NC RR property transactions.

Section 7 is a technical redesignation of a group of existing statutes.

Section 8 creates a new Article 2 in Chapter 124. It provides a definition of the term "State-owned railroad." It grants to the NC RR the authority to lease or license its property, and construct improvements; and creates a *presumption* that any use or improvement authorized by the Board shall be for the purpose of preserving and protecting the NC RR corridor and franchise. It also grants to the NC RR the power to condemn in fee simple, using "quick take" condemnation and limits this power to the existing condemnation powers of railroads under G.S. 40A-3(a)(4). This section also clarifies that the provisions of this section do not repeal or modify the NC RR charter.

Rep. Nesbitt announced that he would appoint a subcommittee to work in this bill to address concerns of the Committee members.

There was further consideration about the proposed section regarding "condemnation in fee simple." Rep. Pope wanted to know if this power would be used to condemn land to build shopping malls. Rep. Nesbitt knew of nothing that would limit them from doing so.

Rep. Blue asked if this was broadening of power of the railroad company any different from the powers possessed by DOT. David King, Secretary of the Department of Transportation, was recognized. He said there was no difference.

Section 9 applies to all railroad companies, not just NCRR, in the absence of clear and unambiguous language to the contrary, any conveyance of property or presumptive grant is presumed to include all subsurface rights below and all air rights above, but this would not apply to the authority granted to utility companies under G.S. 62-180, 62-182, and 62-183.

Rep. Nesbitt asked Scot Saylor what the intent of the Section was. He said this just tries to clarify that the NC RR has a controlled right-of-way, with subsurface and air rights. Rep. Nesbitt asked if there was any history that this is what was bought in 1848.

Rep. Blue asked if this applied to all railroad companies and wondered what precipitated this? Why is this needed? What are the real implications for the existing rights of railroad companies, especially in urban areas where the tendency is to build "up" rather than out.

Senator Dalton said that is existing law now.

Staff Kory Goldsmith commented that she was not aware of the pre-existence of this law in the Statutes.

Sam Hunt said there was probably about 5000 physical agreements Norfolk Southern is trying to organize and get to NC RR. A large number of those are not being adhered to in accordance with the agreement. There are probably 5000 more people that are using this right-of-way that there's no agreements on so the whole intent is to try to make it as clear as possible as to what the rights are and this will grant these for railroad purposes.

Rep. Nesbitt asked Staff to research what affect this would have on current grants or conveyances to people.

Rep. Blue wondered how many other railroads have a specific interest in expanding subsurface and aerial rights. How high in the sky do these easements go? To the sun, the moon?

Rep. Decker asked how the NC RR got this right-of-way? He commented that he found it difficult to believe that everyone just gave their land to the railroad. He wanted to see proof that the railroad owns a 200 foot right-of-way.

Kory Goldsmith continued her analysis. She said Section 10 amends G.S. 40A-5(a) to prevent condemnation of any property interest held by another private or public condemnor unless the State's consent is obtained.

Section 11 provides a new judicial procedure to allow NC RR to summarily seek removal of encroachments found on NC RR property. Under this new procedure, if NC RR believes that an adjoining landowner is encroaching on NC RR property, it can file a "summary removal of encroachment" action with the Clerk of Superior Court. If the Clerk finds that (i) NC RR owns an interest in the subject property and (ii) the encroaching party failed to prove that the encroaching party's use of NC RR property does not interfere with the property interest owned by NC RR, then the Clerk shall render a judgment that the encroachments be removed from the subject property. A stay of execution during an appeal by the encroaching party to prevent removal of the encroachments is not available to the encroaching party. If the encroaching party ultimately prevails on appeal and removal of the encroachment is found to be improper, two remedies would be available -- NC RR could reimburse the encroaching party for the value of the property removed, or condemn the property and pay just compensation.*

The meeting adjourned at 2:30 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

*** Information provided by the NC RR Company:**

"Question and Answer" Sheet *(Appendix I)*

Keeping Track (Aerial pictures of corridor) *(Appendix II)*

NC RR Company Corridor Map *(Appendix III)*

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1343*
Information Technology Committee Substitute Adopted 6/7/00
Third Edition Engrossed 6/13/00
Proposed House Committee Substitute
S1343-CSRC-001.3

Short Title: Rural Internet Access Authority. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA RURAL INTERNET ACCESS AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2E. North Carolina Rural Internet Access Authority.

"§ 143B-437.40. Short title and intent.

This Part is the 'North Carolina Rural Internet Access Authority Act.' The General Assembly finds as follows:

(1) Access to computers and the Internet, along with the ability to effectively use these technologies, are becoming increasingly important for full participation in America's economic, political, and social life.

(2) Affordable, high-speed Internet access is a key competitive factor for economic development and quality of life in the New Economy of the global marketplace.

(3) In the digital age, universal connectivity at affordable prices is a necessity for business transactions, education and training, health care, government services, and the democratic process.

(4) Unequal access to computer technology and Internet connectivity by income, educational level and/or geography could deepen and reinforce the divisions that exist in our society.

(5) The intent of the Rural Internet Access Authority is to close this digital divide for the citizens of North Carolina.

"**§ 143B-437.41. Definitions.**

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Internet Access Authority.

(2) Commission. -- The governing body of the Authority.

(3) High-speed broadband Internet access. -- Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers.

(4) Rural county. -- A county with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

(5) Rural partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

"**§ 143B-437.42. Creation of Authority and Commission.**

(a) Creation. -- The North Carolina Rural Internet Access Authority is created within the Department of Commerce, and except as otherwise provided in this Part, and notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting. These functions of the Secretary of Commerce are ministerial and shall

be performed only pursuant to the direction and policy of the Commission.

The purpose of the Authority is to advise and make recommendations to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority, regarding efforts to provide rural counties with high-speed broadband Internet access. The Authority shall serve as the central rural Internet access policy planning body of the State and shall communicate and coordinate with State, regional, and local agencies, and private entities in order to implement a coordinated rural Internet access policy.

(b) Commission. -- The Authority is governed by a Commission that consists of the following 21 members:

(1) Six members appointed by the Governor, as follows:
- a. One named from the large incumbent local telephone exchange companies in North Carolina.
- b. One from rural telephone cooperatives.
- c. One from competing local telephone exchange companies certified by the North Carolina Utilities Commission.
- d. One from Internet service providers doing business in North Carolina.
- e. Two representing business and education or other users from rural counties.

(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, as follows:
- a. One named from the large incumbent local telephone exchange companies in North Carolina.
- b. One from commercial wireless communications carriers in North Carolina.
- c. One representing MCNC.
- d. One from rural partnerships.
- e. Two representing business and education or other users from rural counties.

(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, as follows:

a. One named from the large incumbent local telephone exchange companies in North Carolina.
b. One from small independent telephone companies.
c. One from cable television companies doing business in rural counties.
d. One from rural partnerships.
e. Two representing business and education or other users from rural counties.

(4) The State's Chief Information Officer, who shall serve ex officio.
(5) Chair of the North Carolina Rural Economic Development Center, who shall serve ex officio.
(6) The Secretary of Commerce, who shall serve ex officio.

(c) Oath. -- As the holder of an office, each member of the Commission must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Commission member.

(d) Terms; commencement; staggering. -- Except as provided in subsection (f) of this section, all terms of office shall commence on August 1 of the year the appointment is made. The term of office of a member of the Commission shall be as follows:

(1) Appointments made under sub-subdivisions (b)(1)c., (b)(1)d., (b)(2)b., (b)(2)d., (b)(3)a., (b)(3)c., and one each of the appointments made under (b)(1)e., (b)(2)e., and (b)(3)e. of this section shall be for a term of one year. Individuals appointed under this subdivision may serve up to four consecutive terms.
(2) All other appointments under this section shall be for a term of three years. Individuals appointed under this subdivision may serve up to two consecutive terms.

(e) Chair. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Commission. The Governor shall convene the first meeting of the Commission.

(f) Vacancies. -- All members of the Commission shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a

vacancy must qualify in the same manner as a person appointed for a full term.

(g) Removal of Commission Members. -- The Governor may remove any member of the Commission for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(h) Compensation of the Commission. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Commission or officers or other private persons. The members of the Commission shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(i) Staff. -- The North Carolina Rural Economic Development Center, Inc., may provide administrative and professional staff support for the Authority under contract.

"**§ 143B-437.43. Powers, duties, and goals of the Authority.**

(a) Powers. -- The Authority shall have the following powers:

(1) To employ, contract with, direct, and supervise all personnel and consultants.

(2) To apply for, accept, and utilize grants, contributions and appropriations in order to carry out its duties as defined in this Part.

(3) To review and recommend changes in all laws, rules, programs and policies of this State or any agency or subdivision thereof to further the goals of rural Internet access.

(b) Duties. -- The Authority shall have the following duties:

(1) To develop and recommend to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority a plan to provide rural counties with high-speed broadband Internet access. The plan may include recommendations for the coordination of activities, the commencement of research, and the review of regulatory and legislative actions in order to achieve the goals and objectives of the Authority.

(2) To propose funding that may be needed from the North Carolina Rural Redevelopment Authority established in Part 2D of this Article and from other appropriate sources for incentives for the private sector to make necessary investments to achieve the Authority's goals and objectives.

(3) To set specific targets and milestones to achieve the goals and objectives set out in subsection (c) of this section.

(c) Goals. -- The goals and objectives of the Authority are:

(1) Local dial-up Internet access provided from every telephone exchange within one year.

(2) High-speed Internet access available to every citizen of North Carolina within three years, at prices in rural counties that are comparable to prices in urban North Carolina.

(3) Two model Telework Centers in either enterprise tier one or enterprise tier two area established by January 1, 2002. To the extent practicable, the Centers should be established in existing facilities.

(4) Significant increases in ownership of computers, related web devices, and Internet subscriptions promoted throughout North Carolina.

(5) Accurate, current, and complete information provided through the Internet to citizens about the availability of present telecommunications and Internet services with periodic updates on the future deployment of new telecommunications and Internet services.

(6) Development of government Internet applications promoted to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more comprehensive programs including training, education, and health care.

(7) Open technology approaches employed to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias.

(d) Reports. -- The Authority must submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Governor, the Committee, or the Commission."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Rural Internet Access Authority created in Part 2E of Article 10 of Chapter 143B of the General Statutes."

Section 3. This act does not obligate the General Assembly to appropriate funds.

Section 4. This act is effective when it becomes law. The North Carolina Rural Internet Access Authority created in this act is dissolved effective December 31, 2003. This act is repealed effective December 31, 2003.

SENATE BILL 1343:
Rural Internet Access Authority

BILL ANALYSIS

Committee: House Ways and Means
Date: June 26, 2000
Version: S1343-CSRC-001.2
House Proposed Committee Substitute

Introduced by: Senator Reeves
Summary by: Kory Goldsmith
Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to SB 1343 creates the North Carolina Rural Internet Access Authority (RIAA). The purpose of the RIAA is to advise and make recommendations to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority regarding efforts to provide rural counties with high-speed broadband Internet access. The Authority dissolves on December 31, 2003.***

The Proposed Committee Substitute differs from the 3rd Edition as follows:

- Specifies that the RIAA is an advisory entity that is intended to serve as the central rural Internet access policy planning body for the State.
- Specifies that the RIAA's powers are: (1) to employ and supervise its personnel, (2) to apply for and accept funds to carry out its defined duties, and (3) to review and recommend changes in laws, rules and policies to further the RIAA's goals.
- Specifies the RIAA's duties are: (1) to develop and recommend a plan for rural Internet access, (2) to propose to the Rural Redevelopment Authority initiatives to be funded to meet the RIAA's goals and objectives, and (3) to set specific goals and targets.
- Stagger the terms of the 18 appointed members of the Commission. Nine of the appointments are for 3-year terms (evenly divided between the Governor, the House and the Senate), and nine of the appointments are for 1-year terms (also evenly divided between the appointing authorities). All appointments commence on August 1 of the year they are made. Also allows for successive appointments.
- Allows the North Carolina Rural Economic Development Center to provide professional and administrative staff.
- Sets December 31, 2003 as the date the Authority is terminated and the act repealed.

BILL ANALYSIS:

Section 1. - The bill adds a new Part 2E to Article 10 of Chapter 143B of the General Statutes.

G.S. 143B-437.40 – States the title of the act and states the findings of the General Assembly. These findings recognize the importance of access to technology for full participation in today's economy, that unequal access to technology and internet access may deepen existing societal divisions, and that it is the intent of the Rural Internet Access Authority to close the digital divide in North Carolina.

G.S. 143B-437.41 – Provides definitions applicable to the act. **"Commission"** refers to the governing board of the Authority. **"High-speed broadband Internet access"** means Internet access with transmission speeds of at least 128 kilobits per second for residential customers and at least 256 kilobits per second for business customers. A "**rural county**" is a county in North Carolina with a density of fewer than 200 people per square mile based on the 1990 United States decennial census.

G.S. 143B-437.42 – Creates the Authority and the Commission. The Authority is created in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce, whose duties are ministerial and performed only pursuant to the direction and policy of the Commission. The Commission is composed of 21 members.

- 6 appointed by the Governor – one from the large incumbent local telephone exchange companies of North Carolina, one from a rural telephone cooperative, one from a competing local telephone exchange company, one from an Internet provider, and two business and education users in rural counties.
- 6 appointed by the House upon the recommendation of the Speaker – one from the large incumbent local telephone exchange companies of North Carolina, one from a commercial wireless communications carrier, one representing NCMC, one from a rural partnership, and two business and education users in rural counties.
- 6 appointed by the Senate upon the recommendation of the President Pro Tempore – one from the large incumbent local telephone exchange companies of North Carolina, one from a small independent telephone company, one from a cable television company, one from a rural partnership, and two business and education users in rural counties.
- The State's Chief Information Officer, ex officio.
- The Chair of the North Carolina Rural Economic Development Center, Inc., ex officio.
- The Secretary of Commerce, ex officio.

Half of the appointed members serve 3-year terms, and the other half serve 1-year terms. The authority that made the appointment fills vacancies. The Governor appoints one of the members as the Chair. The Rural Economic Development Center, Inc. may provide administrative and professional staff to the Commission.

G.S. 143B-437.43 – The powers and duties of the RIAA are set-out above under "Changes in Proposed Committee Substitute." The RIAA is directed to set specific targets and milestones to achieve its goals and objectives. These goals and objectives include:

- Providing local dial-up Internet access for every telephone exchange within 1 year.
- Providing high-speed Internet access to all NC citizens at comparable costs to urban rates within 3 years.
- The creation, by January 1, 2002, of 2 model Telework Centers in either enterprise tier one or enterprise tier two areas. *(Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capital income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than those in higher tiers. For example, enterprise tier one and two counties are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.)*
- Significant increases in computer ownership by North Carolina citizens.
- Accurate, current, and complete information provided via the Internet regarding the availability of Internet services.

- Development of government Internet applications to make citizen interactions with government agencies via the Internet more convenient and to facilitate the delivery of services via the Internet.

The Commission is required to provide quarterly reports on it progress to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations.

Section 2. – Amends G.S. 120-123 to prohibit the appointment of members of the Legislature to the Board.

Section 3. – Provides that nothing in the Act obligates the General Assembly to appropriate funds.

The Act is effective when it becomes law. The Rural Internet Access Authority is dissolved effective December 31, 2003. The act is repealed when the Authority is dissolved.

S1343-SMRC-001(House PCS)

Attachment III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1343

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1343-ASB-001.03

Date 6-27, 2000

Comm. Sub. [YES]
Amends Title [YES]
Proposed Committee Substitute for the Third Edition

Representative HAIRE

moves to amend the bill on page 1, line 3,
by rewriting that line to read:
"AUTHORITY AND TO DIRECT THE REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS, WITH THE ASSISTANCE OF THE RURAL ECONOMIC DEVELOPMENT CENTER, TO STUDY AND REPORT ON THE INFORMATION TECHNOLOGY INFRASTRUCTURE AND INFORMATION TECHNOLOGY NEEDS OF THE WESTERN, NORTHEASTERN, AND SOUTHEASTERN REGIONS OF THE STATE.";

on page 7, lines 3 and 4,
by inserting between those lines:
"Section 3. The Western North Carolina Regional Economic Development Commission, the Northeastern North Carolina Regional Economic Development Commission, and the Southeastern North Carolina Regional Economic Development Commission, established under G.S. 158-8.1, G.S. 158-8.2, and G.S. 158-8.3 respectively, with the assistance of the Rural Economic Development Center, shall study the information technology infrastructure and information technology needs of each county within its particular region. Each study shall include an inventory of existing information technology infrastructure, an inventory of information technology needs, an analysis of how the information technology needs affect industrial and business recruitment, and recommendations that address the information technology needs of each region. In conducting the studies required by this section, the Commissions shall consider the findings of the Connect NC study. The Commissions may contract with the Rural Economic Development Center as needed to undertake these studies. No later than November 1, 2001, each Commissions shall

III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1343

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1343-ASB-001.03

report the results of its study, including any legislative proposals, to the Joint Select Committee on Information Technology."; and

by renumbering the subsequent subsections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Attachment IV

IV

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S1183-CSRC-001.4
THIS IS A DRAFT 27-JUN-00 09:26:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-2 is repealed.

Section 4. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

~~(5) Amount of bonded debt, and for what purpose contracted.~~

~~(6) Amount of other debt, and how incurred.~~

~~(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.~~

~~(8) Amount of gross receipts for past year, and from what sources derived.~~

~~(9) An itemized account of expenditures for past year.~~
~~(10) Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~
~~(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.~~
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.
(14) Acquisitions or dispositions of real property since the last report.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~"

Section 5. G.S. 124-4 is repealed.

Section 6. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(14)."

Section 7. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 8. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise of the power granted under this subdivision. Article 2 of Chapter 40A of the General Statutes. Title to and right of possession of property acquired under this subdivision shall vest in accordance with G.S. 40A-42(a).

"§ 124-13. Effect on State-owned railroad company charter.

Nothing in this Article repeals or modifies any State-owned railroad company charter."

Section 9. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-199. Property interest of a railroad company.

In the absence of clear and unambiguous language to the contrary, a conveyance of property or presumptive grant to a railroad company shall be presumed to include all subsurface rights below and all air rights above the property, subject to any authority granted under G.S. 62-180, G.S. 62-182, and G.S. 183."

Section 10. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 11. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Procedure for Removal of Encroachments/ State-Owned Railroad Company

"§ 124-21. Commencement of action.

(a) A State-owned railroad company may proceed under this Article to remove an encroachment upon:

(1) the property of the State-owned railroad company; or

(2) the use or occupancy of the property of the State-owned railroad company.

(b) Before proceeding under this Article, the State-owned railroad company must make a written demand upon the encroaching party for removal of the encroachment. The written demand shall include a copy of this Article and shall be delivered by certified mail return receipt requested to the last known address of the encroaching party.

(c) This Article shall not apply:

(1) If the State-owned railroad company has given express permission for the encroachment.

(2) To rights granted under G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(3) To claims subject to federal jurisdiction between railroad companies.

"§ 124-22. Filing of complaint.

After making a written demand under G.S. 124-21(b), and upon failure of the encroaching party to remove the encroachment, the State-owned railroad company may file a complaint for the removal of the encroachment with the clerk of superior court in the county in which the encroachment exists. If the encroachment exists in more than one county, the State-owned railroad company may file in any county where any of the encroachments exist for the removal of encroachments owned or operated by the same defendant. The State-owned railroad company may not claim damages for the encroachment or the removal of the encroachment in this proceeding but may seek that recovery in a separate action in a court of competent jurisdiction.

"§ 124-23. Summons issued by the clerk of superior court.

Upon receipt of a complaint filed by a State-owned railroad company under this Article, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 60 days from the service of the

summons to answer the complaint. The summons shall include a copy of this Article.

"§ 124-24. Service of summons.

The summons shall be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. If the summons is returned and appears to have been duly served, the State-owned railroad company may proceed under G.S. 124-25 or G.S. 124-26 of this Article.

"§ 124-25. Trial by the clerk of superior court.

If the defendant, by the defendant's answer, denies any material allegation in the complaint, the clerk of superior court shall hear the evidence and give judgment as the clerk shall find the facts to be.

"§ 124-26. Judgment by confession or where State-owned railroad company has proven case.

In a hearing before the clerk of court or upon confession of judgment by the defendant, the clerk shall issue a judgement for the removal of all encroachments if:

(1) The State-owned railroad company proves its ownership of an easement, lease, license, right-of-way, or any other interest in the property at issue, and the defendant fails to prove by a preponderance of the evidence that its encroachment is lawful or that the defendant's use of the property does not interfere with the State-owned railroad company's property interest; or

(2) The defendant admits the allegations of the complaint.

"§ 124-27. Removal of Encroachment.

Within 15 days of the entry of a judgment under G.S. 124-25 or G.S. 124-26, the defendant shall remove from the property of the State-owned railroad company all encroachments that are the subject of the judgment. If the defendant fails to remove the encroachment within the prescribed time, the clerk may order the sheriff of the county where the encroachment is located to remove the encroachment or to effect other remedies as directed by the clerk. All costs for removal shall be taxed by the clerk.

"§ 124-28. Appeal.

(a) Upon appeal to the superior court as provided in Article 27A of Chapter 1 of the General Statutes from a judgment rendered under G.S. 124-25 or G.S. 124-26, either party may demand that the case be tried at the first session of the superior court after the appeal is docketed. The presiding judge, in the judge's discretion, may first try any pending case in which the rights of

the parties or the public demand it. The prescribing judge may order repleading or further pleading by some or all of the parties in accordance with the Rules of Civil Procedure; may try the action on stipulation as to the issue; or may try it on the pleadings as filed. If the case has not been previously continued in superior court, the court shall continue the case for an appropriate period of time if any party initiates discovery or files a motion to allow further pleadings as provided in this section, or for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure.

(b) A stay of execution of judgment shall not be available to the defendant during an appeal by the defendant from a judgment for the State-owned railroad company under this Article. The State-owned railroad company may proceed with removal of the encroachment under G.S. 124-27.

(c) If it is determined after the exhaustion of all appellate remedies of the State-owned railroad company that the State-owned railroad company did not possess ownership of an easement, lease, license, right-of-way, or any other interest in the property at issue, or it is determined that the defendant's use of the subject property did not interfere with the property interest owned or held by the State-owned railroad company, the following remedies shall be available at the election of the State-owned railroad company:

(1) The State-owned railroad company may reimburse the defendant for the value of the property removed by the State-owned railroad company. The value of the property shall be determined as of the time of removal, and that reimbursement shall be the defendant's sole remedy for the wrongful removal of any encroachment.

(2) In lieu of providing reimbursement under subdivision (1) of this subsection, the State-owned railroad company may elect to exercise the power of eminent domain against the property as provided in Article 2 of this Chapter or under Chapter 40A of the General Statutes. The value of the property subject to condemnation shall be determined as of the date the judgment was rendered. The value of the property taken pursuant to the condemnation shall be the defendant's sole remedy for the wrongful removal of any encroachment.

"§ 124-29. Scope. -- This Article shall not apply to streets, utilties, or other facilites owned or operated by municipalities or counties."

Section 12. Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-280.1. Trespassing on railroad right-of-way.

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without any authority granted pursuant to G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 2 misdemeanor."

Section 13. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 14. Section 27.25(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic

development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 15. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 16. Sections 14 and 15 of this act are effective on and after July 1, 1999. Section 12 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

SENATE BILL 1183: NCRR Amendments

BILL ANALYSIS

Committee: House Ways & Means
Date: June 27, 2000
Version: S1183-CSRC-001.4
House Proposed Committee Substitute

Introduced by: Senator Dalton
Summary by: Kory Goldsmith
Committee Counsel

SUMMARY: ***This bill comes as a recommendation of the Future of North Carolina Railroads Study Commission. It makes numerous changes to the laws relating to the North Carolina Railroad Company (NCRR) and the rights of railroads in general. It allows the NCRR to dispose of or encumber property upon the approval of the Board of Directors. It grants to the NCRR the right to condemn property in fee simple and use the "Quick Take" authority for this type of condemnation. It creates a presumption that any grant of property to a railroad company includes air and subsurface rights absent clear language to the contrary. It creates a new civil action for Summary Removal of Encroachments. It also creates a new criminal trespass statute for trespass on a railroad right-of-way.***

BACKGROUND: The NCRR is a private, for profit corporation. Its charter was enacted by the General Assembly in 1848. The State of North Carolina has always owned a majority of the stock of the company. In 1997, the State of North Carolina provided $61 million to purchase all outstanding voting shares of stock. After purchasing the outstanding voting stock, the NCRR elected to be classified as a Real Estate Investment Trust for federal tax purposes. As a REIT, the corporation is required to pay at least 95% of its income as dividends to the shareholders. Since the State of North Carolina is the only entity holding voting stock, it has received about $11 million in dividends per year since the NCRR reorganized. An entity that elects to become a REIT must retain that status for at least 10 years or suffer adverse tax consequences.

The Proposed Committee Substitute differs from the 3rd edition of the bill as follows:

- It removes Sections 2 and 3 that dealt with the allocation of dividends paid to the State and also interest payments. The House and Senate budgets contain provisions addressing these issues and the versions are in controversy.
- Adds a reference to G.S. 62-182 (allowing utilities the authority to contract for a right-of-way over railroad easements) to several places in the bill where G.S. 62-180 and G.S. 62-183 (also related to the utilities right have an easement for power lines along a railroad) are referenced.
- Exempts Streets, utilities or other facilities owned or operated by municipalities or counties from and action for Summary Removal of Encroachments.
- Directs the Future of North Carolina Railroads Study Commission to study the importance of railroad improvements to North Carolina's economic development.
- Makes the changes to the Future of North Carolina Railroads Study Commission retroactive to July 1, 1999, which is the date the 1999 Studies bill was enacted.
- Makes other technical and stylistic changes.

BILL ANALYSIS:

Section 1 would allow the NCRR to reorganize into a more tax-favorable corporate structure without the prior consent of the General Assembly.

Section 2 clarifies that Board of Directors of the NCRR will manage its affairs and requires the Board of Directors of NCRR to report annually to the Joint Legislative Commission on Governmental Operations on those matters set forth in G.S. 124-3.

Section 3 repeals an obsolete provision that deemed the State a shareholder in any railroad, canal or other "internal improvement" that it made an appropriation to.

Section 4 modernizes the financial reporting requirements for the NCRR, and any other railroad, canal or internal improvement in which the State holds an interest. It requires the report to be made annually to the Joint Legislative Commission on Governmental Operations, and eliminates a criminal penalty for failure to report as required.

Section 5 repeals an obsolete requirement for the Governor to report on canals, railroads, and other internal improvements.

Section 6 authorizes the NCRR to make property transactions, with the approval of the Board. All property transactions would have to be reported annually to the Joint Legislative Commission of Governmental Operations. Current law requires the Governor and the Council of State to approve all NCRR property transactions

Section 7 is a technical redesignation of a group of existing statutes.

Section 8 creates a new Article 2 in Chapter 124.

- It provides a definition of the term "State-owned railroad. It grants to the NCRR the authority to lease or license its property, and construct improvements; and creates a presumption that any use or improvement authorized by the Board shall be for the purpose of preserving and protecting it's the NCRR corridor and franchise.
- It grants to the NCRR the power to condemn in fee simple, using "quick take condemnation. It limits this power to the existing condemnation powers of railroads under G.S. 40A-3(a)(4).
- Clarifies that the provisions of this section do no repeal or modify the NCRR charter.

Sections 9 creates a presumption that property owned by a State-owned railroad includes the subsurface and air rights, unless there is clear and unambiguous language to the contrary. This presumption is subject to the authority granted to utilities companies under G.S. 62-180, 62-182, and 62-183.

Section 10 amends G.S. 40A-5(a) to prevent condemnation of any property interest held by NCRR by another private or public condemnor unless the State's consent is obtained. The State may give consent through (i) the Council of State or (ii) the Secretary of Administration if the Council of State delegates that authority to the Secretary of Administration. G.S. 40A-5(b) allows a public or private condemnor to condemn the property of another condemnor if the property is not in actual public use or necessary to the business of the owner.

Section 11 provides a new judicial procedure to allow NCRR to summarily seek removal of encroachments found on NCRR property. Under this new procedure, if NCRR believes that an adjoining landowner is encroaching on NCRR property, it can file a "summary removal of encroachment" action with the Clerk of Superior Court. If the Clerk finds that (i) NCRR owns an interest in the subject property and (ii) the encroaching party failed to prove that the encroaching party's use of NCRR property does not interfere with the property interest owned

by NCRR, then the Clerk shall render a judgment that the encroachments be removed from the subject property. A stay of execution during an appeal by the encroaching party to prevent removal of the encroachments is not available to the encroaching party. If the encroaching party ultimately prevails on appeal and removal of the encroachment is found to be improper, two remedies would be available -- NCRR could reimburse the encroaching party for the value of the property removed, or condemn the property and pay just compensation.

Section 12 establishes a criminal trespass statute for trespassing on railroad right-of-way. Under current law, there are two degrees of general trespass. A person commits first degree trespass if the person enters or remains, without authorization, on the enclosed or secured premises or building of another. First degree trespass is a Class 2 misdemeanor. A person commits second degree trespass if the person enters or remains, without authorization, on the premises of another after the person has been notified not to enter or remain on the premises or the person enters or remains, without authorization, on a premises that is posted with a notice not to enter. Second degree trespass is a Class 3 misdemeanor.

Section 12 establishes a trespass statute that is specific to railroad right-of-ways and is a Class 2 misdemeanor. Under this statute, a person trespasses if the person enters and remains, without authorization, on a railroad right-of-way. Under this statute, a person could commit trespass on a railroad right-of-way without having notice that the person is on a railroad right-of-way. This statute does not apply to a person crossing a railroad right-of-way at a public or private crossing, nor does it apply to a right-of-way that has been abandoned pursuant to a federal or state order and the right-of-way is not used for railroad services.

Section 13 brings the NCRR and its employees under the Workers' Compensation Act.

Section 14 directs the Future of the NCRR Study Commission to study the importance of railroads to North Carolina's economic development.

Section 15 authorizes the extension the Future of the NCRR Study Commission until January 15, 2001.

Effective Date – Sections 14 and 15 are effective retroactively to July 1, 1999. Section 12 related to criminal trespass becomes effective December 1, 2000, and applies to acts occurring on or after that date. The remainder of the act becomes effective December 1, 2000.

S1183-SMRC-002(House PCS 001.4)

VISITOR REGISTRATION SHEET

Ways & Means
Name of Committee

6-27-000
Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hillman	OSA
[illegible]	OSA
DM Beam	Capitol Grp
V. Hunt	HSE
Kim Hubbard	NCLM
David Anders	RJFPNC
GLENN LAMM	U.T.U
Doris Weaver	N.C CWA Political Council
Richard Westbrook	UTU
[illegible]	CP&C
[illegible]	NCAFPA
[illegible]	NCCCS
[illegible]	NCBB
[illegible]	BELLSOUTH
Doug Lassiter	Lassiter Enb. NCSTA
David King	NCDOT

VISITOR REGISTRATION SHEET

Name of Committee

Date 6-27-2000

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney
Caroline Jackson	DHHS
Leslie Bonev	NCDOC
Bob Gillam	Public Staff - NCUC
Greg Rudert	CapStat
Joe Foster	GTE
John Policastro	AT&T
Charlie Diehl	NC Trucking Association
Steve Woodson	NC Farm Bureau
Mark Walters	Office of the Governor
Barbara Levine	Office of the Governor
R. Paul Wilms	NCMBA
David Summers	Alley Assoc.
Mike Shaw	NC State AFL-CIO
Margaret Westbrook	KCCH

VISITOR REGISTRATION SHEET

Ways + Means — 6-27-00

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Gretchen Kelly	WorldCom
Tom Wescott	Sprint
Jan Moore	[illegible]
for Neff	RC Hatch Corp.
Crissy Porter	Bone & Associates
John Doyle	CCSP
Jack Cogert	CCSP
Kathy Sawyer	Commerce
Rick Carlisle	Commerce

Appendix I

From Attorney 6/27/2000
for NCRR / Appendix I
(Saylor)

Question and Answer - NCRR Study Committee Legislation
Senate Bill 1183 and House Bill 1515

Q – Why is this legislation important to the NCRR?
A -- The legislation was recommended by the Future of the NCRR Study Committee of the General Assembly. The Committee met from January through April of 2000 and had meetings across the state. NCRR's charter is 151 years old (before there were any railroad statutes) and the legislation would bring NCRR into the 21st Century. The change will allow the NCRR to operate with modern rules, not those left over from the 19th century. NCRR can organize and manage its affairs, with the flexibility of a private entity, and report to the state as owner/stockholder. The legislation gives the NCRR the ability to modernize its structure and respond to business and economic development opportunities efficiently.

Q – How does this bill make it easier for the NCRR to manage its corridor?
A -- This bill provides the mechanism and authority for NCRR to manage its 200 foot right of way and other properties for the benefit of the State. Also, while NCRR already has the power of eminent domain, the legislation will clarify that the railroad has the ability to make improvements by acquiring property for track and station improvements in "fee simple" in a faster, simpler procedure, if needed. The provision also would set forth a specific procedure for clearing encroachments on land that the railroad already owns, making the railroad safer and better in the future. These procedures cannot be used without the approval of the NCRR Board, which is appointed by the General Assembly and the Governor. Under the bill, the NCRR would also report to the Joint Legislative Commission on Government Operations.

Q – Why does the NCRR need the continued ability to apply the "debt" with the state toward rail projects?
A -- Two reasons: (1) The purpose of the state's acquisition of the NCRR in 1998 was for the state to get full control of the NCRR so that the corridor can be improved and used for the benefit of the citizens of the state. To fully modernize NCRR's rail corridor will cost in excess of $400 million. Railroad capital improvements require are costly and require long term planning and coordination with freight operations. Use of the right of way by regional transit authorities will also require careful planning and sound property management. By not requiring interest and offsetting the "debt" with NCRR's income, the NCRR can be improved with its own revenue (while not jeopardizing NCRR's favorable tax status as a REIT). Under the legislation, NCRR income could also be used to match federal funds through close coordination with NCDOT.
(2) NCRR does not receive any state appropriation or grants. In the 1999 Session, $19 million of improvements from NCRR dividends were applied to offset the "debt" to the state, leaving a remaining "balance" of $42 million. As a REIT, NCRR cannot fund both (a) required REIT distributions under federal tax law of 95% of income, and (b) repayment of principal and interest on the debt. This bill requires that the NCRR use the railroad's future earnings (approximately $11 million annually) on capital projects to improve the NCRR in a way that avoids potential income tax problems for the NCRR.

Q – What specifically does the NCRR plan to use the income for?
A – The NCRR extends over 300 miles from east to west. Its income will be used to achieve greater speed and reliability of passenger and freight service by:

- double tracking congested areas along the corridor between Charlotte and Raleigh and straightening curves;
- install electronic signals on unsignalled areas, starting east of Greensboro, and improving grade crossings over the entire line;

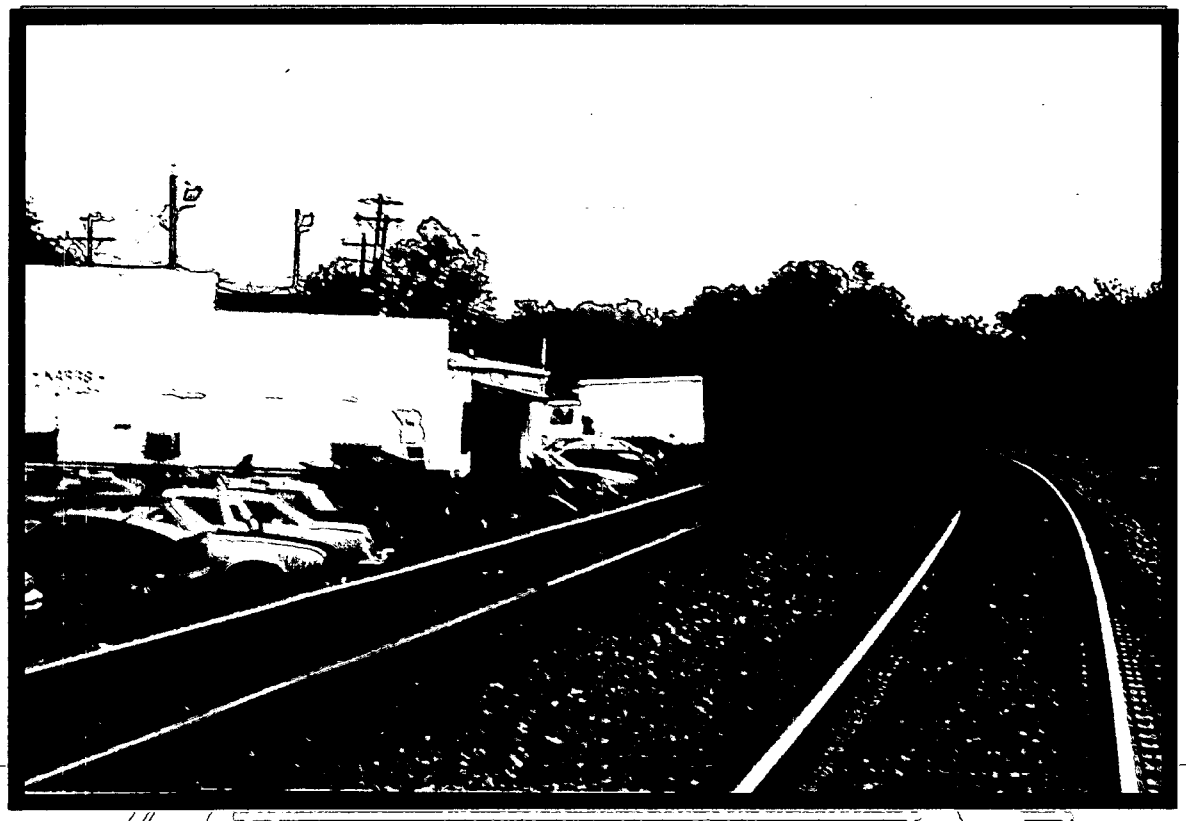
- upgrading other segments between Raleigh and the state port at Morehead City;
- improving bridges and other potential bottlenecks to accommodate regional transit.

The current $48 million initial set of improvements plan in the west calls for some double-tracking and improved signals and elimination of slow speed curves. In the east, under the 1999 legislation, $10 million is being used to upgrade the line, allowing for higher freight speed and improved service.

Q – Why should the General Assembly approve this legislation?
A – The legislation was recommended by the Future of the NCRR Study Committee. It will allow capital improvements to be made now, and it enables NCRR to have flexibility to improve its tracks, spur economic development and help urban areas find solutions to traffic gridlock. A favorable vote keeps North Carolina and the railroad moving forward and committed to its original purpose – economic development through better transportation.

KEEPING TRACK:

Protection and Management of the NCRR Corridor



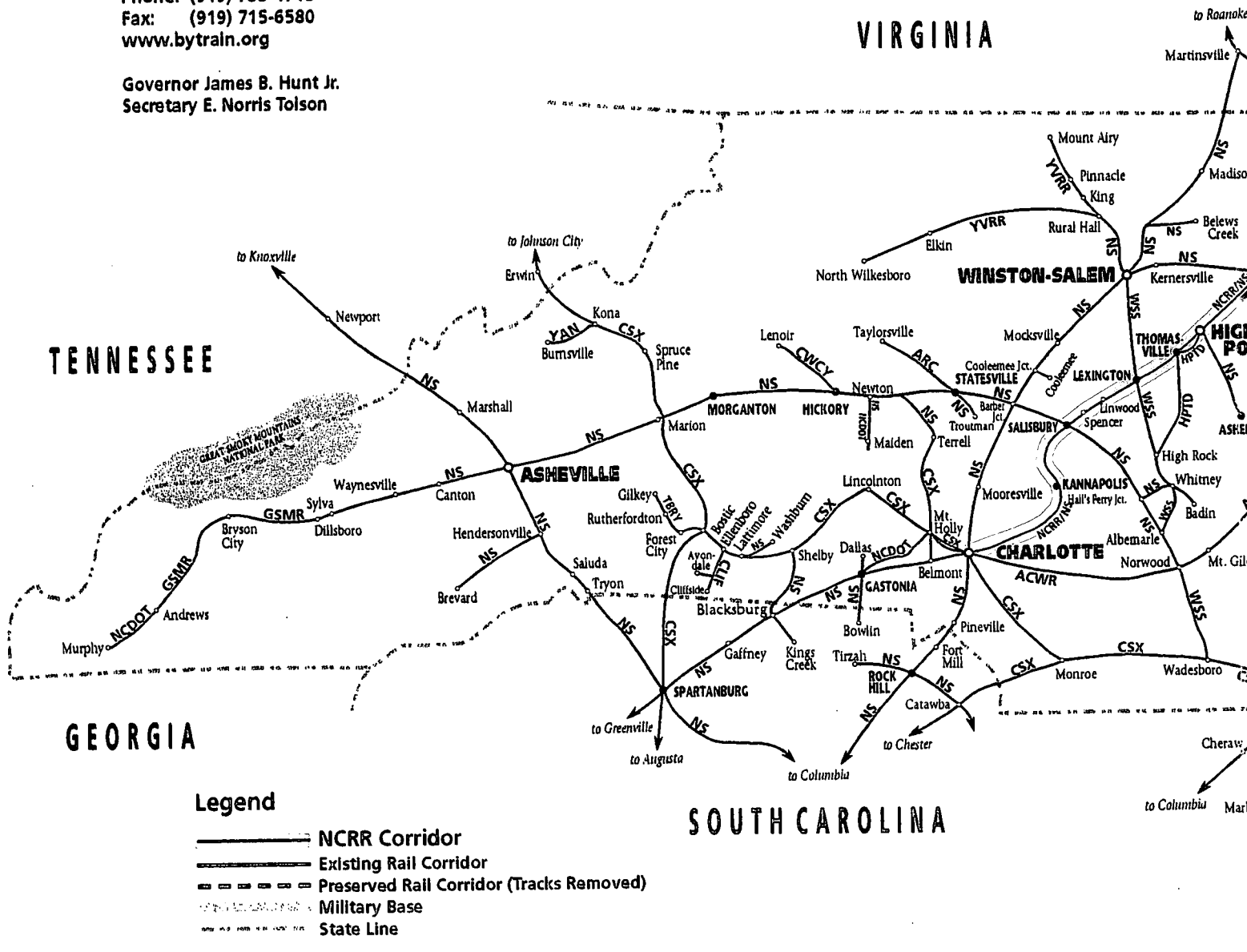
NORTH CAROLINA RAILROAD COMPANY

NORTH CAROLINA RAILRO

Rail Division
North Carolina Department of Transportation
P.O. Box 25201 Raleigh, N.C. 27611-5201

Phone: (919) 733-4713
Fax: (919) 715-6580
www.bytrain.org

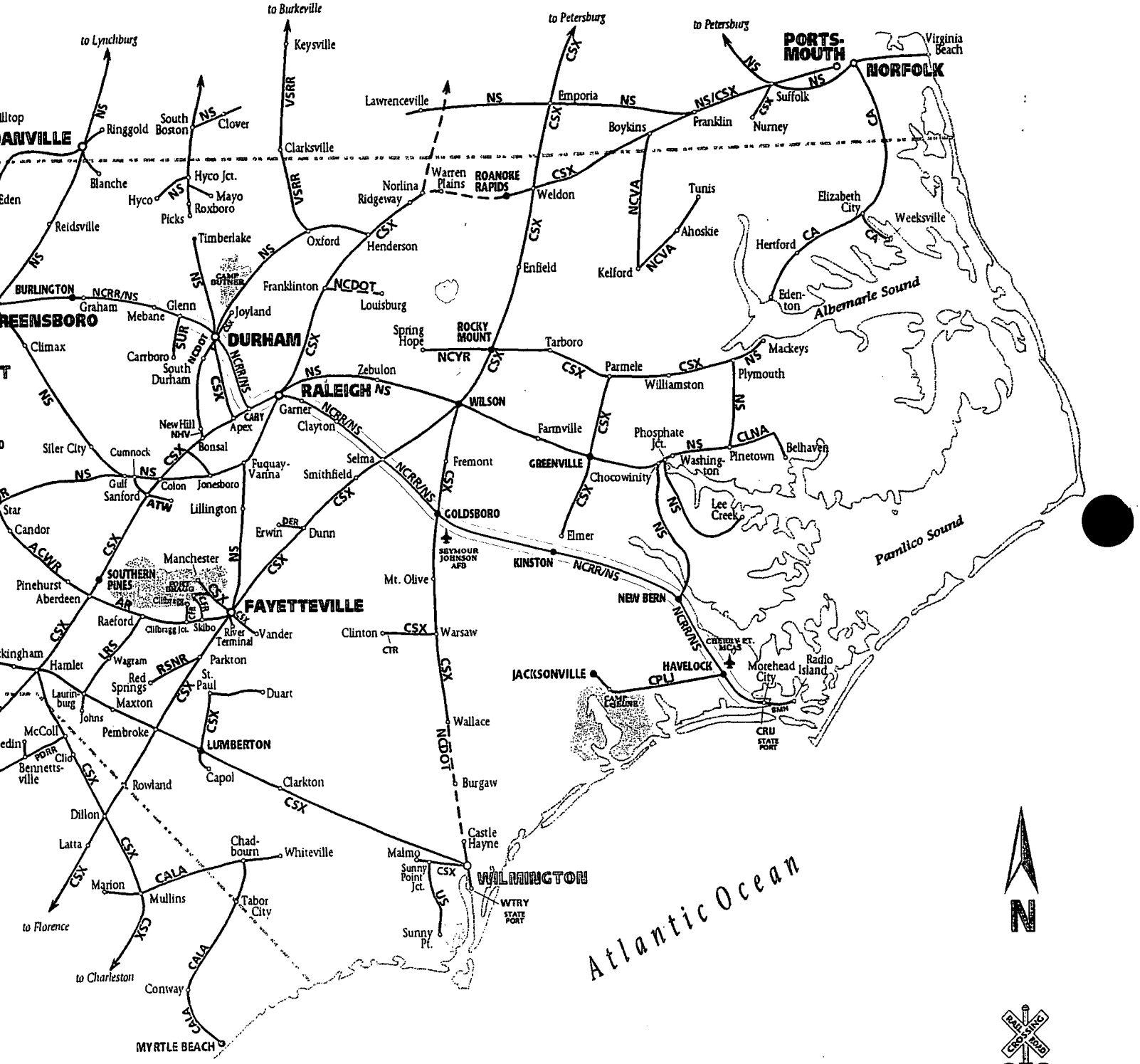
Governor James B. Hunt Jr.
Secretary E. Norris Tolson



Legend

- NCRR Corridor
- Existing Rail Corridor
- Preserved Rail Corridor (Tracks Removed)
- Military Base
- State Line

OAD COMPANY CORRIDOR



LOOK, LISTEN & LIVE
AT RAILROAD
CROSSINGS

August 1998

House Committee
on
Ways and Means

Minutes
June 28, 2000
Room 1228

The House Committee on Ways and Means met at 10:00 a.m. on June 28, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, presided. Members present included Reps. Blue, Bowie, Buchanan, Cox, Decker, Eddins, Oldham, Pope, Starnes, Thomas, Warren, Weiss, and Wilson. Ex- Officio Member Rep. Pete Cunningham was also in attendance.

Rep. Nesbitt called the meeting to order and announced that consideration **of SB 1183 NCRR Amendments**, sponsored by Senator Dalton, was the first order of business. *(See Attachment I)*

Rep. Nesbitt recognized Rep. Pope who had concerns about real property proceedings and the costs involved for the Clerks of Court.

John Kennedy, Clerk of Court, Wake County, was recognized. He said the Clerks of Court had not paid a lot of attention to this bill because they had been led to believe that there would only be about 300 cases to be heard in the 17 counties affected by it. They have since learned that there is a potential to be 5000 such hearings. He said the Clerks generally hear a lot of matters that relate to similar things. They hear condemnation cases for gas pipelines and other similar things. He said the process this bill sets up is in the realm of what clerks do. However, 5000 of these cases would be equal to the entire caseload of such cases that are heard in a year in Wake County with about eight people working on them. His biggest concern is the huge increase in cases of filings that, and that if this is going to result from this bill, there is a need to take a look at how many assistant clerks and staff would be needed to carry out this law.

Senator Dalton said there were approximately 5000 agreements regarding encroachments. Reps. Wilson and Haire asked how many encroachments were on the railroad at this time. Jeff Mann with NCRR said he can't be exact, but thinks the number about 7500.

Rep. Decker questioned the number of documented encroachments. Mann said that records aren't complete at this time.

The land on this right-of-way cannot be adversely possessed. (GS 1-44).

Rep. Nesbitt asked NC RR representatives if it were true that there are towns built on this right-of-way.

Senator Dalton agreed that there were some railroads that run through towns, but reminded the Committee that the State owns this 200 foot right-of-way and it will be necessary to utilize this for high-speed tracking.

Rep. Nesbitt asked if anyone from DOT has looked into the possibility of buying new rights of way to bypass towns.

Rep. Wilson asked about double-tracking. Would double-tracing involve a 400 foot right-of-way? She asked for NCRR to provide the Committee with a map of where they were planning to double-tract. Mr. Saylor said he did not have a map.

Rep. Cox said that there is 310 miles, 200 feet-wide, going through North Carolina and what this bill does is to give NCRR the complete authority that the General Assembly has no control over. Sen. Dalton disagreed. He said he felt that reporting to Governmental Operation would be sufficient oversight.

Rep. Pope wondered if this bill has a fiscal note on the new proceedings this bill would create. A Fiscal Research Analyst said there should not be a major impact.

Rep. Nesbitt asked what happens under this bill if someone encroaching on the right-of-way does not remove that encroachment upon 15-days notice?

Rep. Starnes asked if a business entity has received permission in the past, could that be revoked?

Rep. Eddins said the Committee should have more thorough maps. Some towns in his district were built around the railroad.

Rep. Nesbitt told the Committee that consideration of this bill will continue at the 1:00 p.m. meeting today.

The meeting adjourned at 10:50 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

I

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S1183-CSRC-001.4
THIS IS A DRAFT 27-JUN-00 09:26:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-2 is repealed.

Section 4. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

~~(5) Amount of bonded debt, and for what purpose contracted.~~

~~(6) Amount of other debt, and how incurred.~~

~~(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.~~

~~(8) Amount of gross receipts for past year, and from what sources derived.~~

~~(9) An itemized account of expenditures for past year.~~
~~(10) Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~
~~(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.~~
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.
(14) Acquisitions or dispositions of real property since the last report.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~"

Section 5. G.S. 124-4 is repealed.

Section 6. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(14)."

Section 7. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 8. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise of the power granted under this subdivision. Article 2 of Chapter 40A of the General Statutes. Title to and right of possession of property acquired under this subdivision shall vest in accordance with G.S. 40A-42(a).

"§ 124-13. Effect on State-owned railroad company charter.

Nothing in this Article repeals or modifies any State-owned railroad company charter."

Section 9. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-199. Property interest of a railroad company.

In the absence of clear and unambiguous language to the contrary, a conveyance of property or presumptive grant to a railroad company shall be presumed to include all subsurface rights below and all air rights above the property, subject to any authority granted under G.S. 62-180, G.S. 62-182, and G.S. 183."

Section 10. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 11. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Procedure for Removal of Encroachments/ State-Owned Railroad Company

"§ 124-21. Commencement of action.

(a) A State-owned railroad company may proceed under this Article to remove an encroachment upon:

(1) the property of the State-owned railroad company; or

(2) the use or occupancy of the property of the State-owned railroad company.

(b) Before proceeding under this Article, the State-owned railroad company must make a written demand upon the encroaching party for removal of the encroachment. The written demand shall include a copy of this Article and shall be delivered by certified mail return receipt requested to the last known address of the encroaching party.

(c) This Article shall not apply:

(1) If the State-owned railroad company has given express permission for the encroachment.

(2) To rights granted under G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(3) To claims subject to federal jurisdiction between railroad companies.

"§ 124-22. Filing of complaint.

After making a written demand under G.S. 124-21(b), and upon failure of the encroaching party to remove the encroachment, the State-owned railroad company may file a complaint for the removal of the encroachment with the clerk of superior court in the county in which the encroachment exists. If the encroachment exists in more than one county, the State-owned railroad company may file in any county where any of the encroachments exist for the removal of encroachments owned or operated by the same defendant. The State-owned railroad company may not claim damages for the encroachment or the removal of the encroachment in this proceeding but may seek that recovery in a separate action in a court of competent jurisdiction.

"§ 124-23. Summons issued by the clerk of superior court.

Upon receipt of a complaint filed by a State-owned railroad company under this Article, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 60 days from the service of the

"§ 124-29. Scope. -- This Article shall not apply to streets, utilties, or other facilites owned or operated by municipalities or counties."

Section 12. Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-280.1. Trespassing on railroad right-of-way.

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without any authority granted pursuant to G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 2 misdemeanor."

Section 13. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 14. Section 27.25(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic

development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 15. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 16. Sections 14 and 15 of this act are effective on and after July 1, 1999. Section 12 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

SENATE BILL 1183: NCRR Amendments

BILL ANALYSIS

Committee: House Ways & Means
Date: June 27, 2000
Version: S1183-CSRC-001.4
House Proposed Committee Substitute

Introduced by: Senator Dalton
Summary by: Kory Goldsmith
Committee Counsel

SUMMARY: ***This bill comes as a recommendation of the Future of North Carolina Railroads Study Commission. It makes numerous changes to the laws relating to the North Carolina Railroad Company (NCRR) and the rights of railroads in general. It allows the NCRR to dispose of or encumber property upon the approval of the Board of Directors. It grants to the NCRR the right to condemn property in fee simple and use the "Quick Take" authority for this type of condemnation. It creates a presumption that any grant of property to a railroad company includes air and subsurface rights absent clear language to the contrary. It creates a new civil action for Summary Removal of Encroachments. It also creates a new criminal trespass statute for trespass on a railroad right-of-way.***

BACKGROUND: The NCRR is a private, for profit corporation. Its charter was enacted by the General Assembly in 1848. The State of North Carolina has always owned a majority of the stock of the company. In 1997, the State of North Carolina provided $61 million to purchase all outstanding voting shares of stock. After purchasing the outstanding voting stock, the NCRR elected to be classified as a Real Estate Investment Trust for federal tax purposes. As a REIT, the corporation is required to pay at least 95% of its income as dividends to the shareholders. Since the State of North Carolina is the only entity holding voting stock, it has received about $11 million in dividends per year since the NCRR reorganized. An entity that elects to become a REIT must retain that status for at least 10 years or suffer adverse tax consequences.

The Proposed Committee Substitute differs from the 3rd edition of the bill as follows:

- It removes Sections 2 and 3 that dealt with the allocation of dividends paid to the State and also interest payments. The House and Senate budgets contain provisions addressing these issues and the versions are in controversy.
- Adds a reference to G.S. 62-182 (allowing utilities the authority to contract for a right-of-way over railroad easements) to several places in the bill where G.S. 62-180 and G.S. 62-183 (also related to the utilities right have an easement for power lines along a railroad) are referenced.
- Exempts Streets, utilities or other facilities owned or operated by municipalities or counties from and action for Summary Removal of Encroachments.
- Directs the Future of North Carolina Railroads Study Commission to study the importance of railroad improvements to North Carolina's economic development.
- Makes the changes to the Future of North Carolina Railroads Study Commission retroactive to July 1, 1999, which is the date the 1999 Studies bill was enacted.
- Makes other technical and stylistic changes.

BILL ANALYSIS:

Section 1 would allow the NCRR to reorganize into a more tax-favorable corporate structure without the prior consent of the General Assembly.

Section 2 clarifies that Board of Directors of the NCRR will manage its affairs and requires the Board of Directors of NCRR to report annually to the Joint Legislative Commission on Governmental Operations on those matters set forth in G.S. 124-3.

Section 3 repeals an obsolete provision that deemed the State a shareholder in any railroad, canal or other "internal improvement" that it made an appropriation to.

Section 4 modernizes the financial reporting requirements for the NCRR, and any other railroad, canal or internal improvement in which the State holds an interest. It requires the report to be made annually to the Joint Legislative Commission on Governmental Operations, and eliminates a criminal penalty for failure to report as required.

Section 5 repeals an obsolete requirement for the Governor to report on canals, railroads, and other internal improvements.

Section 6 authorizes the NCRR to make property transactions, with the approval of the Board. All property transactions would have to be reported annually to the Joint Legislative Commission of Governmental Operations. Current law requires the Governor and the Council of State to approve all NCRR property transactions

Section 7 is a technical redesignation of a group of existing statutes.

Section 8 creates a new Article 2 in Chapter 124.

- It provides a definition of the term "State-owned railroad. It grants to the NCRR the authority to lease or license its property, and construct improvements; and creates a presumption that any use or improvement authorized by the Board shall be for the purpose of preserving and protecting it's the NCRR corridor and franchise.
- It grants to the NCRR the power to condemn in fee simple, using "quick take condemnation. It limits this power to the existing condemnation powers of railroads under G.S. 40A-3(a)(4).
- Clarifies that the provisions of this section do no repeal or modify the NCRR charter.

Sections 9 creates a presumption that property owned by a State-owned railroad includes the subsurface and air rights, unless there is clear and unambiguous language to the contrary. This presumption is subject to the authority granted to utilities companies under G.S. 62-180, 62-182, and 62-183.

Section 10 amends G.S. 40A-5(a) to prevent condemnation of any property interest held by NCRR by another private or public condemnor unless the State's consent is obtained. The State may give consent through (i) the Council of State or (ii) the Secretary of Administration if the Council of State delegates that authority to the Secretary of Administration. G.S. 40A-5(b) allows a public or private condemnor to condemn the property of another condemnor if the property is not in actual public use or necessary to the business of the owner.

Section 11 provides a new judicial procedure to allow NCRR to summarily seek removal of encroachments found on NCRR property. Under this new procedure, if NCRR believes that an adjoining landowner is encroaching on NCRR property, it can file a "summary removal of encroachment" action with the Clerk of Superior Court. If the Clerk finds that (i) NCRR owns an interest in the subject property and (ii) the encroaching party failed to prove that the encroaching party's use of NCRR property does not interfere with the property interest owned

by NCRR, then the Clerk shall render a judgment that the encroachments be removed from the subject property. A stay of execution during an appeal by the encroaching party to prevent removal of the encroachments is not available to the encroaching party. If the encroaching party ultimately prevails on appeal and removal of the encroachment is found to be improper, two remedies would be available -- NCRR could reimburse the encroaching party for the value of the property removed, or condemn the property and pay just compensation.

Section 12 establishes a criminal trespass statute for trespassing on railroad right-of-way. Under current law, there are two degrees of general trespass. A person commits first degree trespass if the person enters or remains, without authorization, on the enclosed or secured premises or building of another. First degree trespass is a Class 2 misdemeanor. A person commits second degree trespass if the person enters or remains, without authorization, on the premises of another after the person has been notified not to enter or remain on the premises or the person enters or remains, without authorization, on a premises that is posted with a notice not to enter. Second degree trespass is a Class 3 misdemeanor.

Section 12 establishes a trespass statute that is specific to railroad right-of-ways and is a Class 2 misdemeanor. Under this statute, a person trespasses if the person enters and remains, without authorization, on a railroad right-of-way. Under this statute, a person could commit trespass on a railroad right-of-way without having notice that the person is on a railroad right-of-way. This statute does not apply to a person crossing a railroad right-of-way at a public or private crossing, nor does it apply to a right-of-way that has been abandoned pursuant to a federal or state order and the right-of-way is not used for railroad services.

Section 13 brings the NCRR and its employees under the Workers' Compensation Act.

Section 14 directs the Future of the NCRR Study Commission to study the importance of railroads to North Carolina's economic development.

Section 15 authorizes the extension the Future of the NCRR Study Commission until January 15, 2001.

Effective Date – Sections 14 and 15 are effective retroactively to July 1, 1999. Section 12 related to criminal trespass becomes effective December 1, 2000, and applies to acts occurring on or after that date. The remainder of the act becomes effective December 1, 2000.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — **June 28, 2000 (10:00a.m.)**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doris Weaver	NC CWA Political Council
Glenn Lamm	U.T.U.
Richard Westbrook	UTU
DR Bar	Capitol Comp
Mike Osborne	AOC
Christy Earnhardt	NCATC
Paul Pulley	NCATA
Jeanne Phillips	OSA
Greg McLeod	CCPS/SHP
Jim Proctor	MAYOR LAKE LURE
Roz Smith	NCCCD
Andrew Clinard	John Locke Foundation
John Kennedy	John Kennedy - Assoc of Clerk of Superior Court
Dick Taylor	NCATA

House Committee
on
Ways and Means

Minutes
June 28, 2000
Room 1228

The House Committee on Ways and Means met at 1:00 p.m. on June 28, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, presided. Members present included Reps. Blue, Buchanan, Cox, Decker, Eddins, McCombs, Oldham, Pope, Starnes, Thomas, Warren, Weiss, and Wilson. Ex- Officio Member Rep. Pete Cunningham was also in attendance.

Rep. Nesbitt called the meeting to order and recognized Kory Goldsmith who continued her explanation of the Article 3 of **SB 1183**, *(See Attachment I)* the "Procedure for Removal of Encroachments/State-Owned Railroad Company." She said this section provides a new judicial procedure to allow NC RR to summarily seek removal of encroachments found on NC RR property. Under this new procedure, if NC RR believes that an adjoining landowner is encroaching on NC RR property, it can file a "summary removal of encroachment" action with the Clerk of Superior Court. If the Clerk finds that (i) NC RR owns an interest in the subject property and (ii) the encroaching party failed to prove that the encroaching party's use of NC RR property does not interfere with the property interest owned by NC RR, then the Clerk shall render a judgment that the encroachments be removed from the subject property. A stay of execution during an appeal by the encroaching party to prevent removal of encroachments is not available to the encroaching party under this bill.

Rep. Nesbitt asked Ms. Goldsmith if this kind of thing happened anywhere else in the current law. She said, no, that the closest thing is the "quick-take" process. She also reiterated that there was no stay of execution under this bill.

Sen. Dalton referenced "inverse condemnation" and said it could convert to quick-take condemnation.

Rep. Nesbitt noted that in a summary ejectment procedure, however, a bond could be posted and the landowner could remain on the premises pending appeal.

Rep. Pope referred to a handout provided by NC RR *(Keeping Tract)* where the railroad claims its right-of-way goes through the middle of a large building. He felt that it was unrealistic to say that building can be removed in 15 days. *(See Appendix III from 10:00 a.m. Meeting)* He said this whole process is horrific.

Kory Goldsmith continued her explanation of Section 11. She said if the encroaching party ultimately prevails on appeal and removal of the encroachment is found to be

improper, two remedies would be available--NC RR could reimburse the encroaching party for the value of the property removed, or condemn the property and pay just compensation.

There was further discussion on damages caused by summary removal. Rep. Nesbitt noted that in the *Keeping Tract* handout, entire communities appeared to be on the NC RR right-of-way. He wondered about how the value of the property taken might be determined, and said that in highway condemnation, landowners can be entitled to other damages. In this bill, however, the language says "the value of the property taken pursuant to the condemnation shall be the defendant's sole remedy for the wrongful removal of any encroachment."

Jeff Hudson explained the Section 12 of the bill which establishes a criminal trespass statute for trespassing on railroad right-of-way. Under current law, there are two degrees of general trespass. A person commits first degree trespass if the person enters or remains, without authorization, o the enclosed or secured premises or building of another. First degree trespass is a Class 2 misdemeanor. A person who commits second degree trespass if the person enters or remains, without authorization, on the premises of another after the person has been notified not to enter or remain on the premises or the person enters or remains without authorization, on a premises that is posted with a notice not to enter. Second degree trespass is a Class 3 misdemeanor.

Section 12 establishes a trespass statute that is specific to railroad right-of-ways and is a Class 2 misdemeanor. Under this statute, a person trespasses if the person enters and remains, without authorization, on a railroad right-of-way. Under this statute, a person could commit trespass on a railroad right-of-way without having notice that the person is on a railroad right-of-way. This statute does not apply to a person crossing a railroad right-of-way at a public or private crossing, nor does it apply to a right-of-way that has been abandoned pursuant to federal or state order and the right-of-way is not used for railroad services. This bill creates a law specific to railroad right-of-way trespass where the trespasser does not have to be aware of being on a right-of-way and requires no notice or posting by the railroad.

Kory Goldsmith explained that Section 13 brings the NC RR and its employees under the Workers' Compensation Act. Section 14 directs the Future of NC RR Study Commission to study the importance of railroads to North Carolina's economic development and Section 15 authorizes the extension of the Future of the NC RR Study Commission until January 15, 2001. Sections and 14 and 15 also establish effective dates relating to criminal trespass and the bill.

Rep. Decker wondered if the original intent of the 1840 Charter was to give the NC RR a 200 foot right-of-way all along the 310 mile corridor. He felt that the landowners who lost land for this purpose thought that the railroad only wanted enough room to build the tract.

Scot Saylor, Attorney for the NC RR explained that the Railroad had the power of inverse condemnation.

Kory Goldsmith read the original 1840 Charter of the NC RR.

Rep. Nesbitt pointed out that the original Charter said that the right-of-way was to be for the purpose of getting to or building the railroad. That right-of-way did not give the NC

RR broad powers such as ownership of the subsurface or aerial rights as SB 1183 would do, as well as fee simple, which means that the land can be used for any purpose.

Discussion followed. Rep. Nesbitt appointed a subcommittee to study the bill and come up with suggestions to address concerns of committee members. Appointees were: Reps. Wilson, Pope, Buchanan, Blue, Cox, and Thomas. Rep. Blue was appointed Chair.

The meeting adjourned at 1:40 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S1183-CSRC-001.4
THIS IS A DRAFT 27-JUN-00 09:26:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-2 is repealed.

Section 4. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

~~(5) Amount of bonded debt, and for what purpose contracted.~~

~~(6) Amount of other debt, and how incurred.~~

~~(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.~~

~~(8) Amount of gross receipts for past year, and from what sources derived.~~

~~(9) An itemized account of expenditures for past year.~~
~~(10) Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~
~~(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.~~
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.
(14) Acquisitions or dispositions of real property since the last report.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~"

Section 5. G.S. 124-4 is repealed.

Section 6. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(14)."

Section 7. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 8. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise of the power granted under this subdivision. Article 2 of Chapter 40A of the General Statutes. Title to and right of possession of property acquired under this subdivision shall vest in accordance with G.S. 40A-42(a).

"§ 124-13. Effect on State-owned railroad company charter.

Nothing in this Article repeals or modifies any State-owned railroad company charter."

Section 9. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-199. Property interest of a railroad company.

In the absence of clear and unambiguous language to the contrary, a conveyance of property or presumptive grant to a railroad company shall be presumed to include all subsurface rights below and all air rights above the property, subject to any authority granted under G.S. 62-180, G.S. 62-182, and G.S. 183."

Section 10. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 11. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Procedure for Removal of Encroachments/ State-Owned Railroad Company

"§ 124-21. Commencement of action.

(a) A State-owned railroad company may proceed under this Article to remove an encroachment upon:

(1) the property of the State-owned railroad company; or

(2) the use or occupancy of the property of the State-owned railroad company.

(b) Before proceeding under this Article, the State-owned railroad company must make a written demand upon the encroaching party for removal of the encroachment. The written demand shall include a copy of this Article and shall be delivered by certified mail return receipt requested to the last known address of the encroaching party.

(c) This Article shall not apply:

(1) If the State-owned railroad company has given express permission for the encroachment.

(2) To rights granted under G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(3) To claims subject to federal jurisdiction between railroad companies.

"§ 124-22. Filing of complaint.

After making a written demand under G.S. 124-21(b), and upon failure of the encroaching party to remove the encroachment, the State-owned railroad company may file a complaint for the removal of the encroachment with the clerk of superior court in the county in which the encroachment exists. If the encroachment exists in more than one county, the State-owned railroad company may file in any county where any of the encroachments exist for the removal of encroachments owned or operated by the same defendant. The State-owned railroad company may not claim damages for the encroachment or the removal of the encroachment in this proceeding but may seek that recovery in a separate action in a court of competent jurisdiction.

"§ 124-23. Summons issued by the clerk of superior court.

Upon receipt of a complaint filed by a State-owned railroad company under this Article, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed 60 days from the service of the

summons to answer the complaint. The summons shall include a copy of this Article.

"§ 124-24. Service of summons.

The summons shall be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. If the summons is returned and appears to have been duly served, the State-owned railroad company may proceed under G.S. 124-25 or G.S. 124-26 of this Article.

"§ 124-25. Trial by the clerk of superior court.

If the defendant, by the defendant's answer, denies any material allegation in the complaint, the clerk of superior court shall hear the evidence and give judgment as the clerk shall find the facts to be.

"§ 124-26. Judgment by confession or where State-owned railroad company has proven case.

In a hearing before the clerk of court or upon confession of judgment by the defendant, the clerk shall issue a judgement for the removal of all encroachments if:

(1) The State-owned railroad company proves its ownership of an easement, lease, license, right-of-way, or any other interest in the property at issue, and the defendant fails to prove by a preponderance of the evidence that its encroachment is lawful or that the defendant's use of the property does not interfere with the State-owned railroad company's property interest; or

(2) The defendant admits the allegations of the complaint.

"§ 124-27. Removal of Encroachment.

Within 15 days of the entry of a judgment under G.S. 124-25 or G.S. 124-26, the defendant shall remove from the property of the State-owned railroad company all encroachments that are the subject of the judgment. If the defendant fails to remove the encroachment within the prescribed time, the clerk may order the sheriff of the county where the encroachment is located to remove the encroachment or to effect other remedies as directed by the clerk. All costs for removal shall be taxed by the clerk.

"§ 124-28. Appeal.

(a) Upon appeal to the superior court as provided in Article 27A of Chapter 1 of the General Statutes from a judgment rendered under G.S. 124-25 or G.S. 124-26, either party may demand that the case be tried at the first session of the superior court after the appeal is docketed. The presiding judge, in the judge's discretion, may first try any pending case in which the rights of

the parties or the public demand it. The prescribing judge may order repleading or further pleading by some or all of the parties in accordance with the Rules of Civil Procedure; may try the action on stipulation as to the issue; or may try it on the pleadings as filed. If the case has not been previously continued in superior court, the court shall continue the case for an appropriate period of time if any party initiates discovery or files a motion to allow further pleadings as provided in this section, or for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure.

(b) A stay of execution of judgment shall not be available to the defendant during an appeal by the defendant from a judgment for the State-owned railroad company under this Article. The State-owned railroad company may proceed with removal of the encroachment under G.S. 124-27.

(c) If it is determined after the exhaustion of all appellate remedies of the State-owned railroad company that the State-owned railroad company did not possess ownership of an easement, lease, license, right-of-way, or any other interest in the property at issue, or it is determined that the defendant's use of the subject property did not interfere with the property interest owned or held by the State-owned railroad company, the following remedies shall be available at the election of the State-owned railroad company:

(1) The State-owned railroad company may reimburse the defendant for the value of the property removed by the State-owned railroad company. The value of the property shall be determined as of the time of removal, and that reimbursement shall be the defendant's sole remedy for the wrongful removal of any encroachment.

(2) In lieu of providing reimbursement under subdivision (1) of this subsection, the State-owned railroad company may elect to exercise the power of eminent domain against the property as provided in Article 2 of this Chapter or under Chapter 40A of the General Statutes. The value of the property subject to condemnation shall be determined as of the date the judgment was rendered. The value of the property taken pursuant to the condemnation shall be the defendant's sole remedy for the wrongful removal of any encroachment.

"§ 124-29. Scope. -- This Article shall not apply to streets, utilties, or other facilites owned or operated by municipalities or counties."

Section 12. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-280.1. Trespassing on railroad right-of-way.**

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without any authority granted pursuant to G.S. 62-180, G.S. 62-182, and G.S. 62-183.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 2 misdemeanor."

Section 13. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 14. Section 27.25(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic

development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 15. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 16. Sections 14 and 15 of this act are effective on and after July 1, 1999. Section 12 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

House Committee
on
Ways and Means

Minutes
June 29, 2000
Room 1228

The House Committee on Ways and Means met at 1:00 p.m. on June 29, 2000 in Room 1228 of the Legislative Building, Raleigh, NC.

Rep. Martin Nesbitt, Chairman, presided. Members present included Reps. Blue, Bowie, Buchanan, Decker, Eddins, Fox, Gibson, Haire, Michaux, Morris, Oldham, Pope, Thomas, Warren, and Weiss. Ex-Officio Member Cunningham was also in attendance.

Rep. Dan Blue was recognized to give a subcommittee report for **SB 1183 (NCRR Amendments).** *(See Attachment I)* He then moved that the Committee adopt the proposed committee substitute and his motion passed.

He explained the changes adopted by the Subcommittee. On P.2, line 12-the subcommittee considered language that said any excess profits or dividends realized by the NCRR would be given to the General fund. Then it realized that if NCRR converts to a non-profit as set forth in Item 2, non-profits don't have dividends and they don't have excess revenue from a tax standpoint. The Subcommittee determined to let the Committee decide this issue.

On line 126, Section 4, the Subcommittee changed Section 4 and put back in all of the items that the railroad and added a requirement that they report about the leases that they have entered into, the sales that they have made or any acquisitions they have done during the course of the previous year since their last report. He said the intent here is not to have a listing of every transaction they make, but rather to have a summary or an overview. Also on line 14 another requirement was added to require annual financial statements.

Rep. Michaux wondered if that would preclude a state audit, to which attorney for NCRR, Scot Saylor, answered that they have done independent audits. Rep. Blue saw no reason why the State Auditor couldn't audit the NCRR.

Rep. Blue said another consideration the subcommittee struggled with was confidentiality, but could not, because of time limitations, come up with any language.

He said the subcommittee eliminated any power of "quick-take" from the bill, but left intact the regular ability to condemn property which is the power of all railroads.

Senator Dalton, the bill sponsor, said that removal of rights to subsurface and air provisions was the most major change in the subcommittee's report, along with deletion

of the summary removal of encroachments, which he felt was the thing that caused the most concern about the bill.

Rep. Blue continued with the report. On page 5, eliminated Section 11 (Article 3) totally which is everything relating to the procedure for removing encroachments. That was a substantial portion of the bill. The Subcommittee agreed on this completely. Rep. Nesbitt told the Committee that there were already provisions in the law for the removal of encroachments, if in fact, the NCRR is entitled to remove them.

On trespassing, Section 10, changed by simply adding that under these circumstances stayed subject to the authority of the current State and Federal law. There was discussion about Railway Labor Act and whether or not an encroacher was a trespasser. Rep. Nesbitt pointed out that there were whole towns built on the NCRR right-of-way.

Rep. Michaux wondered why the NCRR needed this language in the bill, to which Rep. Nesbitt responded, so they wouldn't have to post the property every 200 feet.

One last thing the subcommittee did is propose that the Committee create an oversight committee that would have as its specific duty, oversight of the North Carolina Railroad. It did not want to put that language in this bill because that will require that the bill go to the Committee on Rules.

Rep. Michaux sent forth an amendment to change the offense of trespassing on railroad right-of-way from a Class 2 misdemeanor to a Class 3 misdemeanor. The amendment was adopted. *(See Attachment II)*

Rep. Decker moved to amend the bill by deleting Section 3 of the Act. His motion passed. (*See Attachment III)*

Nesbitt referred to Page 2-Oversight of the money. Right now they have to pay a dividend. Last year it was $19 million which was appropriated to DOT. From there $10 million went to the eastern part of State for rail improvements, $6 million went to buy property in Charlotte for a passenger Station, and $3 million to Burlington to restore a building on the railroad.

Rep. Nesbitt asked staff to draft a provision that requires the NCRR to make a payment to the State in lieu of dividends in a like amount.

Rep. Decker was concerned about language in §124-12, line 12, so he made a motion to amend the report to make certain that "all things that they do, they can do for the purpose of protecting the railroad corridor and franchise. " His motion passed. *(See Attachment IV).*

The meeting adjourned at 1:45 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S1183-CSRC/SB-001.6
THIS IS A DRAFT 29-JUN-00 11:56:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

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Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-2 is repealed.

Section 4. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

(5) Amount of bonded debt, and for what purpose contracted.

(6) Amount of other debt, and how incurred.

(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.

(8) Amount of gross receipts for past year, and from what sources derived.

(9) An itemized account of expenditures for past year.
(10) ~~Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~ A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.
(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~ Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records."

Section 5. G.S. 124-4 is repealed.

Section 6. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10)."

Section 7. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 8. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision.

"**§ 124-13. Effect on State-owned railroad company charter.**

Nothing in this Chapter repeals or modifies any State-owned railroad company charter, or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes."

Section 9. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 10. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-280.1. Trespassing on railroad right-of-way.**

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without authority granted pursuant to State of federal law.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 2 misdemeanor."

Section 11. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 12. Section 27.25(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail

service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 13. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 14. Sections 12, 13, and 14 of this act are effective on and after July 1, 1999. Section 10 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment II

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-29-2000

S. B. No. 1183-CSRC/SB-001.6 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
Sen.)

moves to amend the bill on page 5, line 15

( ) WHICH CHANGES THE TITLE

by deleting the number "2" and substituting the number "3".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment III

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-29

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1183-CSRC/SB-001.6

Rep.) Decker
Sen.)

1 moves to amend the bill on page ~~24~~ 2, line 24
2 ( ) WHICH CHANGES THE TITLE
3 by deleting Section 3 of the act
4
5
6
7
9
10
11
12
13
14
15
16
17
18
19

SIGNED M. Decker

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

IV
Attachment IV

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-29-2000

S. B. No. 1183 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S 1183-CSRC/SR-0016

Rep.) Decker
Sen.)

1 moves to amend the bill on page 4, line 5 12 through 14
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting those lines to read:
4
5 " grant, or otherwise, for the purpose
6
7 of "
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)

VISITOR REGISTRATION SHEET

WAYS & MEANS — Name of Committee

6/29/00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Simmons	NCDOT
Dana Damico	Media General
Jeff Mann	NCRR
Dennis Patterson	
Mark Benson	Capital Group
Richard Westbrook	UTU
Glenn Lamm	UTU.
David Anders	PFFPNC
Richard O'Brien	"
Matt Osborne	AOC
Greg Rideout	Copstruct
Deborah Johnson	NCSPA
Nat Mund	CCNC
R. Paul Wilson	NCHBA
Spencer Phillips	OSA
Doug Lassiter	NCSTA
Lisa Reyes	The Insider
Don Beam	Capitol Grp
Michelle Cooke	Winston Group.
Jim Upchurch	CP&L
Andrew Ellis	John Locke Foundation
Unreadable	NS
Lucius Pullen	Attorney
David Simmons	Alley Assoc.

House Committee
on
Ways and Means

Minutes
June 30, 2000
Room 415

The House Committee on Ways and Means met at 12:35 p.m. on June 30, 2000 in Room 415 of the Legislative Office Building. Rep. Martin Nesbitt, Chairman, presided. Members present included Reps. Blue, Bowie, Buchanan, Fox, Michaux, Redwine, Warren, and Weiss.

Rep. Nesbitt called the meeting to order and said that **SB 1183 NCRR Amendments** was the first order of business. Senator Dalton, the bill sponsor, was recognized.

Proposed Committee Substitute (S1183-CSRC/SB-001.6) was before the Committee. *(See Attachment I)* Rep. Fox moved to amend the bill. Kory Goldsmith explained that the amendment concerned the issue of confidentiality at such time that NC Railroad Corporation was requested to provide information to the Governor or a committee of the General Assembly. Rep. Bowie moved to adopt the amendment was adopted. (*See Attachment II.)*

Rep. Bowie moved to amend the committee substitute. Kory Goldsmith explained that this was a conforming amendment, that the committee substitute already gives the power of fee simple condemnation to the railroad. Rep. Bowie moved that the amendment be adopted and her motion passed. (*See Attachment III.*)

Rep. McCombs moved that the committee substitute with amendments and other technical changes deemed appropriate by staff be made into a new committee substitute, to give the new committee substitute a favorable report and the original bill an unfavorable report. The motion passed. *(See Attachment IV)*

The was discussion about generating a committee bill which would "Create Joint Leg. Comm. On Future of NCRR" and staff distributed a draft of this proposal. (*See Attachment V).* Rep. Buchanan that moved that the Committee adopt the bill draft.

Kory Goldsmith was asked to explain the proposal. She said that during the subcommittee meeting, Rep. Wilson had proposed to amend the original bill, a provision that would codify and make permanent, a committee to study the future of railroads. The current Future of NC Railroad Study Commission expires when it submits its final report to the 2001 General Assembly. The proposal is written so that the day after that Commission expires a standing oversight committee would be created.

There was discussion with Senator Dalton about broadening the mission of the Committee bill to include all railroads in North Carolina, not just the North Carolina Railroad.

Rep. Bowie wondered if this would pull the railroad issue about of the Transportation Oversight Committee.

Rep. Nesbitt explained that when the NC Railroad Corporation converts to a non-profit entity, as it proposes to do in five years, and no longer pays the state dividends, as has been said, the Transportation Oversight Committee will have no power of oversight.

Rep. Nesbitt commented on the growing importance of railroads to move both freight and people in the State. In looking at the rail corridors that the State now owns, it is apparent that some new corridors will need to be bought. Trains don't necessarily have to go through cities. The State owns this entity, worth $300 million and the people of the State are the shareholders. But if in the future the composition changes, there is the question of whom NCRR would answer to, if anyone

Rep. Bowie was concerned about the money the railroad pays as dividends. Rep. Nesbitt reiterated that when the NCRR converts to a non-profit, it will no longer pay dividends to the State, that there will be no money.

The committee bill was amended to include oversight of all railroads in North Carolina and to specify that this commission provide oversight of the North Carolina Railroad. Rep. Buchanan moved to adopt that amendment. His motion passed. He then moved to have the bill, with amendments, made into a committee substitute, give that bill a favorable report and to re-refer the bill to the Committee on Rules. The motion passed. *(See Attachments VI, VII, and VIII)*

SB 1284 (APA Technical Changes), (*See Attachment IX),* sponsored by Senator Foxx, was before the committee for consideration. Staff Jeff Hudson explained that this was a companion bill to **HB 1596** which the committee had already passed. Rep. Redwine moved to give the bill a favorable report. The motion passed.

There being no further business, the meeting adjourned at 1:15 p.m.

Rep. Martin L. Nesbitt, Chairman

Janette Whaley Lee, Committee Assistant

Attachment I

DRAFT

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S1183-CSRC/SB-001.6
THIS IS A DRAFT 29-JUN-00 11:56:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-2 is repealed.

Section 4. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

(a) The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

(5) Amount of bonded debt, and for what purpose contracted.

(6) Amount of other debt, and how incurred.

(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.

(8) Amount of gross receipts for past year, and from what sources derived.

(9) An itemized account of expenditures for past year.
(10) ~~Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~ A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.
(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.
(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~ Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records."

Section 5. G.S. 124-4 is repealed.

Section 6. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10)."

Section 7. Sections 124-1 through 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 8. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.
"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for any purpose. Any use or improvement authorized by a State-owned railroad company shall be presumed to be for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision.

"**§ 124-13. Effect on State-owned railroad company charter.**

Nothing in this Chapter repeals or modifies any State-owned railroad company charter, or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes."

Section 9. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 10. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-280.1. Trespassing on railroad right-of-way.**

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without authority granted pursuant to State or federal law.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 2 misdemeanor."

Section 11. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 12. Section 27.25(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail

service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 13. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 14. Sections 12, 13, and 14 of this act are effective on and after July 1, 1999. Section 10 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

Attachment II

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1183

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1183-ARC-009.8

Date 6-30- ,2000

Comm. Sub. [YES]
Amends Title []
S1183-CSRC/SB-001.6

Representative Fox

moves to amend the bill on page 2, line 27, by inserting "(a)" before the word "The";

and on page 3, lines 18-21, by rewriting the lines to read:
"~~be guilty of a Class 1 misdemeanor.~~
(b) Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records. The State-owned railroad company shall not be deemed to have waived any attorney-client privilege when complying with this subsection. At the time a State-owned railroad company provides information under this section, it shall indicate whether the infprmation is confidential. Confidential information shall be subject to subsection (c) of this section.
(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information shall not be subject to a request under G.S. 132-6(a).".

SIGNED Stan Fox
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1183

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

S1183-ARC-009.8

ADOPTED ✓ FAILED _____ TABLED _____

Attachment III III

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1183

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1183-ARC-002.2 Page 1 of __

Date 6-30- ,2000

Comm. Sub. [YES]
Amends Title []
S1183-CSRC-001.6

Rep. Bowie

moves to amend the bill on page 4, lines 29-30, by inserting between the lines the following:

"Section 8.1. G.S. 40A-3(a) is amended by adding a new subdivision to read:

'(a) Private Condemnors. -- For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

...

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1183
Commerce Committee Substitute Adopted 6/14/00
Proposed House Committee Substitute S1183-PCS3993-RC/SB001.7

Short Title: NCRR Amendments. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

Whereas, during the 1997 Session of the General Assembly the State provided funds to buy the stock of all of the private shareholders so that the railroad right-of-way could be preserved as a company asset for future economic growth; and

Whereas, the North Carolina Railroad Company is a private corporation with all of the voting stock owned by the State of North Carolina and all of the members of the Board of Directors appointed by the Governor and the General Assembly; and

Whereas, as a private corporation the North Carolina Railroad Company is uniquely situated to respond to the needs of the State and to quickly and efficiently develop transportation and economic development improvements for the State; and

Whereas, certain statutory amendments are critically necessary for the North Carolina Railroad Company to fulfill its potential for the benefit of the State of North Carolina and its people; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section 32.30 of S.L. 1997-443, reads as rewritten:

"No stock owned by the State of North Carolina in the North Carolina Railroad Company shall be sold or transferred except with the prior consent of the General

Assembly, except as part of a transaction or series of transactions relating to (i) a plan of merger or consolidation of that company with another company, and where the State will be the owner of all of the voting stock in the merged or consolidated ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation, limited liability company, or any other entity that is wholly owned by the State; or (iii) the reorganization of that company."

Section 2. G.S. 124-1 reads as rewritten:

"**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. The Board of Directors of a State-owned railroad company shall be responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

Section 3. G.S. 124-3 reads as rewritten:

"**§ 124-3. Report of railroad, canal, etc.; contents.**

(a) The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, ~~when required to do so by the Governor,~~ report annually to the Joint Legislative Commission on Governmental Operations. ~~make or cause to be made to the Governor and Council of State a written report of its affairs.~~ This report shall ~~show:~~ include:

(1) Number of shares owned by the State.

(2) Number of shares owned otherwise.

(3) ~~Face~~ Par value of ~~such~~ the shares.

~~(4) Market value of each of such shares.~~

(5) Amount of bonded debt, and for what purpose contracted.

(6) Amount of other debt, and how incurred.

(7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.

(8) Amount of gross receipts for past year, and from what sources derived.

(9) An itemized account of expenditures for past year.

(10) ~~Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.~~ A summary of all leases, sales, or acquisitions of real property to which the company has been a party since the last report.

(11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.

(12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

(13) Annual financial statements, including notes, audited by an independent certified public accounting firm.

~~Any person failing to report as required by this section shall be guilty of a Class 1 misdemeanor.~~

(b) Upon the request of the Governor or any committee of the General Assembly, a State-owned railroad company shall provide all additional information and data within its possession or ascertainable from its records. The State-owned railroad company shall not be deemed to have waived any attorney-client privilege when complying with this subsection. At the time a State-owned railroad company provides information under this section, it shall indicate whether the information is confidential. Confidential information shall be subject to subsection (c) of this section.

(c) Confidential information includes (i) information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or (ii) information that is subject to confidentiality obligations of a railroad company. Confidential information shall not be subject to a request under G.S. 132-6(a)."

Section 4. G.S. 124-4 is repealed.

Section 5. G.S. 124-5 reads as rewritten:

"**§ 124-5. Approval of encumbrance on State's interest in corporations.**

(a) No corporation or company in which the State owns the majority of any class of voting stock shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Governor and Council of State.

(b) No State-owned railroad company shall sell, lease, mortgage, or otherwise encumber its franchise, right-of-way, or other property, except by and with the approval and consent of the Board of Directors of that corporation. The president or other chief officer of the State-owned railroad company shall report any acquisitions and dispositions in accordance with G.S. 124-3(10)."

Section 6. G.S. 124-1 through G.S. 124-7 of Chapter 124 of the General Statutes, as amended by this act, are designated as Article 1 of that Chapter to be entitled "General Provisions."

Section 7. Chapter 124 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"State-Owned Railroad Company.

"**§ 124-11. Definition.**

As used in this Chapter, the term 'State-Owned Railroad' Company shall mean a railroad company in which the State owns all of the voting stock.

"**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. -- A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. -- A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision.

"**§ 124-13. Effect on State-owned railroad company charter.**

Nothing in this Chapter repeals or modifies any State-owned railroad company charter or limits the rights of the shareholders of the company as provided in Chapter 55 of the General Statutes."

Section 8. G.S. 40A-3(a) is amended by adding a new subdivision to read:

"(a) Private Condemnors. -- For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

. . .

(5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2)."

Section 9. G.S. 40A-5(a) reads as rewritten:

"(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to ~~him.~~ the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property."

Section 10. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-280.1. Trespassing on railroad right-of-way.**

(a) Offense. -- A person commits the offense of trespassing on railroad right-of-way if the person enters and remains on the railroad right-of-way without the consent of the railroad company or the person operating the railroad or without authority granted pursuant to State or federal law.

(b) Crossings. -- Nothing in this section shall apply to a person crossing the railroad right-of-way at a public or private crossing.

(c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-of-way that has been legally abandoned pursuant to an order of a federal or State agency having jurisdiction over the right-of-way and is not being used for railroad services.

(d) Classification. -- Trespassing on railroad right-of-way is a Class 3 misdemeanor."

Section 11. G.S. 97-13(a) reads as rewritten:

"(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended."

Section 12. Section 27.25.(c) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(c) Duties of the Commission. -- The Commission shall study the following matters:

(1) ~~The appropriate purpose, powers, and governance of the North Carolina Railroad Company.~~ The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina. The Commission's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company."

Section 13. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

"Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an interim report to the General Assembly on or before May 1, 2000. The Commission shall submit a final report to the General Assembly by January 15, 2001. Upon filing of the final report, the Commission shall terminate."

Section 14. Sections 12, 13, and 14 of this act are effective on and after July 1, 1999. Section 10 of this act becomes effective December 1, 2000, and applies to offenses occurring on or after that date. The remainder of this act becomes effective December 1, 2000.

DRAFT

6-30-2000
V
Attachment V

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

99-RC-013
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Create Joint Leg. Comm. on Future of NCRR. (Public)

Sponsors: Ways and Means Committee.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE THE JOINT LEGISLATIVE COMMITTEE ON THE FUTURE OF THE NORTH CAROLINA RAILROAD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12N

"Joint Legislative Committee on the

"Future of the North Carolina Railroad.

"**§ 120-70.120. Creation and Membership of Joint Legislative Committee on the Future of the North Carolina Railroad.**

(a) The Joint Legislative Committee on the Future of the North Carolina Railroad is established. The Committee shall be composed of 16 members as follows:

(1) Eight members of the House of Representatives appointed by the Speaker of the House.

(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

(b) Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

(c) Any vacancy on the Committee shall be filled by the appointing authority.

"§ 120-70.121. Purpose and duties of Committee.

(a) The Committee may study the following matters:

(1) The importance of railroads and railroad infrastructure improvements to economic development in North Carolina, including improvements to short line railroads.

(2) Issues important to the future of passenger and freight rail service in North Carolina.

The Committee's study of these and any other matters is not intended and shall not delay the North Carolina Railroad Company's contract negotiations with freight and passenger rail service operators including Research Triangle Regional Public Transportation Authority and Norfolk Southern Railway Company.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislatiion needed to implement a recommendation of the Committee.

"§ 120-70.121. Organization of Committee.

(a) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Committee. The Committee shall meet upon the call of the cochairs.

(b) A quorum of the Commission shall be nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Attachment VI

EDITION No. _____

H. B. No. 99-RC-013 DATE 6-30-2000

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) _____

Sen.)

1 moves to amend the bill on page 1, line 11

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4

5 "Committee on the Future of

6

7 North Carolina Railroads"

8

9

10

11

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment VII VII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-30-2000

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 10-11

2 ( ) WHICH CHANGES THE TITLE

3 by inserting

4 "(3) And to provide oversight by of

5 the North Carolina Railroad."

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7

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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 AMENDMENT

(Please type or use ballpoint pen)

VIII
Attachment VIII

EDITION No. _____

H. B. No. 99-RC-013 DATE 6-30-2000

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) / Sen.) _____

moves to amend the bill on page 1, line 3

(X) WHICH CHANGES THE TITLE

by deleting the word "THE"; and

on page 1, line 3 by deleting the word "RAILROAD." and substituting "RAILROADS.";

and on page 1, line 9, by re-writing the line to read: "Future of North Carolina Railroads.";

and on page 1, line 12, by deleting the word "the";

and on page 1, line 13, by deleting the word "Railroad" and Substituting "Railroads"

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1284*

Short Title: APA Technical Changes. (Public)

Sponsors: Senators Foxx; Ballance, Hartsell, Kerr, Miller, Purcell, and Webster.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVISE OBSOLETE STATUTORY REFERENCES TO VARIOUS ADMINISTRATIVE PROCEDURE ACT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the ~~hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 2. G.S 15A-1376 reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Post-Release Supervision and Parole Commission must adopt ~~regulations~~ rules governing the ~~hearing and must file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 3. G.S. 15B-6(a)(1) reads as rewritten:

"(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article ~~2~~ 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;".

Section 4. G.S. 90-88(d) reads as rewritten:

"(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes ~~places [place]~~ place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by ~~G.S. [Chapter]~~ Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a ~~substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B.~~ substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to ~~G.S. [Chapter] 150B~~ Chapter 150B of the General Statutes within 180 days of its decision to object."

Section 5. G.S. 90-116 reads as rewritten:

"**§ 90-116. Board of Examiners in Optometry.**

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article ~~2,~~ 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term."

Section 6. G.S. 90-140 reads as rewritten:

"**§ 90-140. Selection of chiropractic members of Board.**

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article ~~2~~ 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo."

Section 7. G.S. 90-223(b)(1) reads as rewritten:

"(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule ~~promulgated or amended~~ adopted under this Article shall ~~be filed and distributed in accordance with the provisions of Article 5 of Chapter 150B of the General Statutes of North Carolina. A copy must~~ be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board."

Section 8. G.S. 113-55.2(a) reads as rewritten:

"(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Secretary may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement

officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Secretary within the requirements of this section. These criteria are exempt from Article ~~2~~ 2A of Chapter 150B of the General ~~Statutes but shall be filed in accordance with Article 5 of that Chapter.~~ Statutes."

Section 9. G.S. 113-221(e1) reads as rewritten:

"(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.

The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of ~~Articles 2 and 5~~ Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

Section 10. G.S. 113-275(a1) reads as rewritten:

"(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article ~~2~~ 2A of Chapter 150B of the General Statutes. ~~Notwithstanding the provisions of G.S. 150B-59(a), the~~ The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission."

Section 11. G.S. 113A-115(a) reads as rewritten:

"(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this

section are in addition to the hearing required by Article ~~2~~ 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby."

Section 12. G.S. 130A-309.29 reads as rewritten:

"**§ 130A-309.29. Adoption of rules.**

The Commission may adopt rules to implement the provisions of this Part pursuant to Article ~~2~~ 2A of Chapter 150B of the General Statutes."

Section 13. G.S. 130B-8(a)(8) reads as rewritten:

"(a) Neither the Commission nor any contractor performing services on behalf of the Commission shall be subject to the following provisions of the General Statutes:

. . .

(8) Article ~~2~~ 2A of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14."

Section 14. G.S. 150B-1(d)(2) is repealed.

Section 15. Effective dates. Section 14 of this act is effective July 1, 2000. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

House Ways and Means Committee — Name of Committee

June 30, 2000 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Kleiss	NC Board for Licensing of Soil Sci
Hubert Byrd	Soil + Environmental Consultants
Nat Mund	CCNR
Emily Meeker	CCNC
[illegible] Adkins	NC Bd of Examiners for Eng. + Surveyors
Kona Shanbhag	NCCAPDV
Lucius Pullen	Attorney NC Mining Assoc.
Jim FAIN	NC Dept Commerce
Elizabeth Outts	NC-PIRG
Jim Blackburn	NC Assoc. County Commrs.
Mark Walters	Office of the Governor
Katrina Sawyer	Commerce
Leslie Bovey	Commerce

VISITOR REGISTRATION SHEET

WAYS & MEANS — Name of Committee

6/30/00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney
Elisabeth Bondurant	Sen. Fox intern
Don Beeson	Capital Group
Mark Benson	Capital Group
Nyman Cooper	CSX.

House Committee
on
Ways and Means

Minutes
July 11, 2000
House Chamber

The House Committee on Ways & Means met at 11:15 a.m. around Rep. Martin Nesbitt's desk in Chamber. A quorum was present.

A motion was made to postpone indefinitely all House Bills remaining in Committee for which there was not a letter from the bill sponsor requesting that the bill not be considered. The motion passed.

The meeting adjourned at 11:20 a.m.

Rep. Martin L. Nesbitt, Chairman

Janette W. Lee, Committee Assistant